(*d*) The High Court may make rules for carrying into effect the provision of this section.

NOTES.

Scope of section—Defamation of Court—Proceedings apart from section, if maintainable.—S. 194, Cr.P.Code, is not exhaustive of the remedy available where a Court and not a particular Judge has been defamed. Both criminal proceedings under the section and contempt proceedings lie against a person who has committed contempt of Court by indulging in illegitimate criticism of the conduct of a particular Judge; and there is no reason in principle for holding that when a Court generally has been defamed proceedings for contempt do not also lie against the delinquent: 1935 A.L.J. 125: 1935 All. 1; see also 22 B. 112.

Information, What is.—" Information is a formal written suggestion by the Crown of an offence committed, field by the Attorney-General by way of informing the Court of grave offences affecting the State which may be immediately prosecuted without waiting for any previous application to any other tribunal": see Woodroffe, Cr.P.C., p. 218.

Ex-officio information, Contents of.—An ex-officio information under S. 194 should contain a statement of the charge as certain and detailed as an indictment. Allegations as to the opinion of the executive likely to be very prejudicial to the accused should not be included: 1933 P.C. 124:64 M.L.J. 466.

Procedure by information exhibited by Advocate-General, when to be appeied.—Per Jack, J.:—The procedure prescribed by S. 194, Cr.P. Code, in cases of contempt of Court, depends upon the exhibition of information exhibited by the Advocate-General with the previous sanction of the Governor-General in Council or the Local Government and would therefore place the maintenance of regard for the Court entirely in the hands of the executive. Such procedure might be applied to a case in which there could be any doubt as to the meaning of the words used and which had, therefore, better be left to the decision of a jury; but where there is no ambiguity in the words used, where the facts are undisputed and where the accused are thoroughly able and willing to defend themselves in summary procedure, the Court is entitled to take summary proceedings against the guilty parties: 63 C. 217 (S.B.): 1935 Cal. 419.

Coroner's inquisition is commitment in Calcutta and Bombay.—In Calcutta and Bombay, where the Coroner's Act is in force, an inquisition drawn up by the Coroner has the effect of commitment to the High Court, when it has been accepted by the High Court, and the officers of the Crown have drawn up a charge in accordance with it: 31 C. 1: 7 C.W.N. 889.

Ex-officio information, power of Patna High Court to entertain.—The High Court of Patna has jurisdiction to try persons against whom the Government Advocate with the previous sanction of the Local Government has exhibited an ex-officio information: 64 M.L.J. 466: 1933 P.C. 124 (P.C.).

Prosecution for contempt of lawful authority of public servants.

*195. [1][(1) No Court shall take cognizance—(*a*) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whome he is subordinate;

---

(1) Substituted by the Code of Criminal Procedure (Amendment) Act (XVIII of 1923), for the original sub-section (1).

*S. 195 before its amendment in 1923 ran as follows:—

"S. 195. (1) No Court shall take cognizance—

(*a*) of any offence punishable under Ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some other public servant to whom he is subordinate;

Prosecution of contempt of lawful authority of public servants.

(*b*) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196,199,200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

Prosecution for certain offences againts public justice.

(*c*) of any offence discribed in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.]

Prosecution for certain offences relating to documents given in evidence.

(*b*) of any offence punishable under Ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208 209, 210, 211 or 228 of the same Code; when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences against public justice.

(*c*) of any offence described in S. 463 or punishable under Ss. 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

(2) In Cls. (*b*) and (*c*) of sub-S. (1) the term "Court" means a Civil, Revenue or Crimina Court but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

(3) The provisions of sub-S. (1), with reference to the offences named therein apply also to criminal conspiracies to commit such offences and to the abetment of such offences, and attempts to commit them.

(4) The sanction referred in this section may be expressed in general terms, and need not name the accused persons; but it shall so far as practicable specify the Court or other place in which, and the occasion on which the offence was committed.

Nature of sanction necessary.

(5) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(6) Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no sanction shall remain in force for more than six months from the date on which it was given; provided that the High Court may, for good cause shown, extend the time.

(7) For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, that is to say:—

(*a*) Where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Courts shall be deemed to be subordinate.

(*b*) Where such appeal lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed.

(*c*) Where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first mentioned Court is situate".

(2) In clauses (*b*) and (*c*) of sub-section (1), the term "Court" [1][includes] a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.[2]

[3][(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate:

Provided that—

(*a*) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate; and

(*b*) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.]

[4][(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to [5][criminal conspiracies to commit such offences and to] the abetment of such offences, and attempts to commit them.

[6][(5) Where a complaint has been made under sub-section (1), clause (*a*), by a public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.]

NOTES.

Synopsis.

---

(1) Substituted by the Code of Criminal Procedure (Amendment) Act (XVIII of 1923), for "means".

(2) See now the Indian Registration Act, (XVI of 1908).

(3) Substituted by Act (XVIII of 1923), for the original sub-section (7) which was renumbered (3) by the same Act.

(4) The original sub-section (3) was renumbered (4) by the Criminal Procedure (Amendment) Act (XVIII of 1923).

(5) Inserted by the Criminal Law (Amendment) Act (VIII of 1913).

(6) The original sub-sections (4), (5) and (6) were repealed and the new sub-section (5) was inserted by Act (XVIII of 1923).

I. GENERAL.

[See also Notes under S. 476, *infra*].

Synopsis.

1. Sanction to prosecute no longer in vogue.
2. Sanction granted after 1st of September, 1923, is illegal.
3. Object of section.
4. Scope of section.
5. Ss. 195 to 199 are exceptions to the general rule.
6. Section, if a provision of substantive law.
7. No jurisdiction in the absence of complaint.
8. Objection to cognizance of offence by Magistrate owing to absence of complaint—When may be taken.
9. Proper order in case of absence of proper complaint.
10. Facts disclosing offence requiring complaint and also other offences—Trial and conviction for other offences—Validity.
11. Private complaint of defamation not barred although facts alleged constitute offence specified in section.
12. Addition of offence specified in section without fresh complaint.
13. Conviction for different offence specified in section.
14. Conviction for different offence not specified in section.
15. Prosecution of persons not named in complaint—See Note 6 under Heading VII under S. 476, *infra*.
16. Complaint—Meaning of.
17. Complaint must be in writing.
18. Principles guiding a Court in making complaint.
19. Prosecution when suit pending.
20. Stay of proceedings during pendency of civil litigation.
21. Whether application necessary for making complaint.
22. Application made after great delay.
23. Particulars to be specified in application.
24. Application not to be dismissed for default of applicant.
25. Preliminary enquiry before making complaint.
26. Effect of complaint.
27. Order as to costs in proceedings under the section.
28. Application for making complaint can sustain action for malicious prosecution.
29. Complaining authority cannot try case.

---

1. Sanction to prosecute no longer in vogue.—The Criminal Procedure Code (Amendment) Act (XVIII of 1923), which came into force on the 1st of September, 1923, repealed the law empowering a Court to grant sanction to a private individual to prosecute an offender in respect of an offence connected with the administration of justice. The grant of sanction operated only to remove an obstacle which the law had placed in the way of a private individual, desiring to start criminal proceedings in respect of certain offences, and was a matter affecting only, the procedure of the Courts. Before the amendment of the Code the Courts were enjoined not to entertain a complaint by a private person in respect of any of the offences enumerated in S. 195, Cr.P.C., unless the complaint was accompanied with a sanction granted by the public servant or the Court concerned. The present law has abolished the method of starting criminal proceedings after obtaining sanction, and insists upon a complaint in writing being filed by the public servant or the presiding officer of the Court concerned. The alteration made by the amendment of 1923 affects only the procedure to be adopted for setting the law in motion and does not deprive a party of any substantive right alleged to have been acquired by him under the old law. Though he himself cannot now make a complaint, he can still set the law in motion by asking the authority concerned to prepare a complaint: 6 Lah. 40 (42 to 44). Sanction cannot now be applied for under S. 195, but no prosecution can now be instituted for the offences mentioned in S. 195, unless ordered by the Court under S. 476, *infra*. S. 476 gives Court power with respect to any offence

referred to in S 195: 2 Rang. 374 (381). Regarding the reasons for the above change, the Select Committee observed as follows:—"The provisions of S. 195 caused constant and great difficulty, and various amendments have been suggested which we have considered at length." We have no doubt that it will not be possible to remedy the evils which are connected with this section so long as private individuals are allowed to prosecute for offences connected with the administration of justice. In our opinion, the only effective way of dealing with this section is to allow prosecutions to be launched only by the public servant or by the Court. "We see no reason why the public servant or the Court should not file a complaint exactly in the same way as private individuals would do in other cases, and our proposals in connection with this section and the enlargement of S. 476 involve the adoption of this principle. In our view, S. 195 should bar the cognizance by any Court of offences of this nature except upon such complaint, while the procedure to be followed when the Court desires to prosecute should be prescribed by S. 476. "The adoption of this principle will at all events get rid of the objectionable practice of keeping a sanction, which has been granted to a private individual, hanging over the head of the accused person for a period of six months, which is frequently utilised for various purposes of blackmail. In the case of complaint by a Court or the public servant we do not think that it will be necessary to prescribe any limit of time. It will also, in our opinion, be a distinct advantage to get rid altogether of term "sanction" in connection with these prosecutions, a result which will be affected by the amendments we propose. "We recognise that Clause (*a*) of sub-S. (1) stands on a somewhat different footing from clauses (*b*) and (*c*) but we think there is no reason to retain even in it any reference to a sanction, as prosecutions under Cl. (*a*) can reasonably be lauuched in all cases on the direct complaint of a public servant."—Report of the Select Committee of 1916.

2. Sanction granted after 1st of September, 1923, is illegal.—A sanction for prosecution for perjury granted after the 1st September, 1923, when the Amending Act, XVIII of 1923, came into force, is illegal: 26 Bom. L.R. 1235: 26 Cr.L.J. 448. In such a case, the High Court refused to treat the sanction, though valueless as a good complaint within S. 195 (*b*), Cr.P.C., or S. 476, Cr.P.C. In a criminal case involving the liberty of the subject, it was not a proper course to adopt: 51 C. 652: 1924 Cal. 826.

3. Object of section.—It is not the function of the Court that acts under this section to require the same strictness of proof that Courts are won't to demand before the pronounce an accused person to be guilty. The object of the provisions of S. 195 is merely to prevent prosecutions by private persons on their own motion and to secure there being a *prima facie* ground for prosecution by requiring the complaint of the Court: (1911) 2 M. W. N. 172: 12 Cr. L. J. 446; see also 13 A.L.J. 1111. The objects of the law in requiring sanction, now complaint, from the Court or authority concerned are:—(i) To protect persons from criminal prosecutions by persons actuated by personal malice or ill-will: 1887 A.W.N. 142 (143); see also 1 .C.W.N. 400; 7 Cr. L. J. 495 (496): 4 L.B.R. 234; 11 A.L.J. 313: 14 Cr. L. J. 389; 26 A. 1: 1 Cr. L. J. 120. (*ii*) To insist on there being prosecutions only when the interests of public justice render it necessary, and to prevent prosecutions when public interest cannot be served: 1 C.W.N. 400; see also 7 Cr. L. J. 495 (496): 4 L.B.R. 234; 2 Weir 178; Rat. 374; 3 C. W. N. 3; 35 P. R. 1889 (Cr.); 1893 A. W. N. 104; 11 I. C. 790: 12 Cr.L.J. 446. (*iii*) To protect persons from prosecutions on insufficient grounds and to ensure prosecution only when the Court, aftere due consideration is satisfied that there is a proper case put a party on his trial: 7 Cr.L.J. 495 (496): 4 L.B.R. 234; see also 16 W.R. (Cr.) 37 (39); 7 M. 560: 2 Weir 180; 1893 A. W. N. 104. The intention of the legislature in enacting Ss. 195 and 476, is to prevent innocent persons being put on trial at the instance of persons likely to be moved by motives of revenge and not to protect guilty persons from the penalty of their crimes. This object is in no way defeated by the fact that at the time the Magistrate makes a complaint, he is not empowered to act as a Magistrate, where he is merely completing the preliminary proceedings that he has begun at a time when he had such powers: 15 P. 26: 1936 P. 346. The principle underlying S. 195 is that where an act amounts to the offence of contempt of the lawful authority of public servants, or to an offence against public justice, such as giving false evidence, or to an offence relating to documents actually used in a Court, private prosecutions are barred absolutely, and only the Court in relation to which the offence was committed may initiate proceedings. In the case of an offence alleged to have been committed against public justice, if the Court in its discretion has declined to prosecute, on the ground that there was not strong *prima facie* case, the refusal of the Court to prosecute is final and a private complaint by

the party who is animated by a sense of personal grievance is barred under S. 195 (1) (*b*), Cr.P. C.: 171 I.C. 943: (1937) 2 M.L.J. 757.

4. Scope of section.—S. 195, Cr.P.C., is one of the sections which prohibit a Court from taking cognizance of certain offences unless and until a complaint has been made by some particular authority or person: 53 All. 804 (809). The other sections dealing with similar matters are Ss. 196 to 199-A of the Cr. P. C. These sections do not lay down any rule of procedure. They only create a bar and say that unless some requirement has been complied with, no Court shall take cognizance of the offences described in those sections: 53 All. 804 (809).

5. Sections 195 to 199 are exceptions to the general rule.—Ss. 195 to 199 are exceptions created by the Code, to the general rule that any person, having knowledge of the commission of an offence, may set the law in motion by a complaint, though he is not personally interested or affected by the offence: 13 B. 600; see also 18 A. 465: 1896 A. W. N. 149; 6 W.R. (Cr.) 13; 21 B. 536; 63 I.C. 865; 1 P. 423: 3 P.L.T. 559; 1963 (1) Cr. L.J. 358 (Ker.) (Courts have no power to add to the list). S. 195 is a limiting section providing an exception to the general rule that any one could make a complaint of a criminal offence: 29 Cr. L. J. 652: 1928 L. 510. Ss. 195 to 199 regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith: A.I.R. 1955 S.C. 196.

6. Section, if a provision of substantive law.—S. 195, though it forms a part of the Code of Procedure, in reality contains a provision of the substantive law of crime. It does not deal with the competency of the Courts, nor lays down which of several Courts shall in any particular matter have jurisdiction to try the case. It in reality lays down that the offences therein referred to shall not be deemed to be any offences at all, except on the complaint to the persons or the Courts therein specified; it enhances the connotation of those offences and limits the scope of their definition: 21 S.L.R. 1: 1927 S. 10. But see A.I.R. 1955 S.C. 196 noted above.

7. No jurisdiction in the absence of complaint.—Before the amendment of the Cr.P.C. by Act XVIII of 1923, the absence of a sanction would not necessarily invalidate the proceedings. This portion of S. 537 has now been omitted and since the amendment if Court entertains a case covered by S. 195 without such a complaint as the law requires, its proceedings are void. The case would come under S. 530, Cl. (*p*). The Court is not empowered to try the offender except upon a complaint made by the proper authority: 27 Cr.L.J. 901: 1926 A. 700: 1927 N. 184; 1925 O. 413; 1934 O. 186: 35 Cr. L. J. 789 (offence under S. 182, I. P. C.); 1940 O.W.N. 917: 189 I. C. 702 (offence under S. 182, I. P. C.); A. I. R. 1955 Mys. 1 (Do); 23 A. L. J. 35: 1925 A. 306 (perjury); A. I. R. 1947 Pat. 64 (offence under S. 211, I. P. C.); 41 Bom. L. R. 98: 1939 Bom. 129 (fabrication of false evidence); 1961 Ker. L. T. 778: 1962 (1) Cr. L. J. 340; 1961 A. L. J. 278: 1962 (1) Cr. L. J. 627 (provisions of S. 195 are mandatory); A. I. R. 1962 S. C. 1206 (Trial under S. 182, I. P. C., without complaint is without jurisdiction *ab initio*). A complaint in writing by the public servant concerned is a condition precedent to the cognizance being taken by a Magistrate of an offence mentioned in S. 195 (1) (*a*) and that condition must be strictly complied with. A complaint not by the public servant concerned or by some public servant to whom he is subordinate, but by a person who is merely authorised in writing to file a complaint in his own name is not a good substitute for the requisite complaint so as to confer jurisdiction upon the Magistrate. S. 195 does not permit any delegation of authority by the public servant concerned: 57 Bom. 151: 1955 Cr. L. J. 1156: A.I.R. 1955 Bom. 315, relying on A.I.R. 1914 Bom. 138, and dissenting from I.L.R. (1943) All. 29 and A.I.R. 1951 Sau. 8, which have been noted below. In the above case, Shah, J., referring to A.I.R. 1918 Bom. 141 observes as follows:—" S. 195 (*a*) before it was amended in 1923 provided that no Court shall take cognizance of any offence punishable under Ss. 172 to 188, Penal Code, except with the previous sanction or on the complaint of the public servant concerned or of some other public servant to whom he was subordinate. It was possible, before the Code was amended in the year 1923, for a public servant to give sanction for prosecution for offences specified in that sub-section and no form of sanction was provided by the Code of Criminal Procedure. In those circumstances if there was evidence to indicate that the public servant concerned desired that the offender should be prosecuted that was sufficient compliance with the terms of S. 195 and a sanction may be deemed to be given. The Legislature has now deleted the words " with the previous sanction or" in the section as it stood at the date when the case in A.I.R. 1918 Bom. 141 was decided. The

observations made in that case can have no validity since the amendment of the Code of Criminal Procedure in the year 1923: A. I. R. 1955 Bom. 315 (317). See also 1963 M.P.L.J. (Notes) 33; 1959 A.L.J. 620; 28 I.C. 107 cited below. Where in a proceeding instituted on a police report the accused was convicted under S. 353, I.P.C., the Appellate Court cannot alter the conviction to one under S. 186, I.P.C., in the absence of a previous complaint in writing of the public servant concerned or some other public servant to whom he was subordinate and the defect cannot be cured by S. 537, *infra*: 45 C.W.N. 580. Where the Forester reported the incident to the Divisional Forest Officer, who, in his turn, reported to the Police; and the Police in their turn after investigation charge-sheeted the accused persons under S. 186, I.P. Code, the cognizance without the complaint in writing of the officer concerned was without compliance with the provisions of S. 195 and was fatal to the prosecution: I.L.R. (1954) Cut. 92: A.I.R. 1954 Orissa 175. Before starting a prosecution for an offence under S. 186, Penal Code, a compliance with the provisions of S. 195 (1) is a condition precedent to the Court assuming jurisdiction and failure to comply with these provisions will vitiate the entire trial as without jurisdiction: A.I.R. 1955 Sau. 10.

The requirements of S. 195 regarding a complaint in writing of the public servant concerned in case of an offence under S. 188 of the Penal Code have not been dispensed with by the provisions of S. 11 of the Prevention of Intimidation Ordinance (V of 1930): 55 B. 322: 1931 B. 135; see also 58 C. 971: 1931 C. 122 or by the provisions of S. 10 of the Criminal Law (Amendment) Act of 1932: 17 Cut. L. T. 80: A.I.R. 1951 Orissa 84; I.L.R. (1950) Cut. 476: A.I.R. 1951 Orissa 138. See also A.I.R. 1952 A. 560: 1952 Cr. L. J. 1934.

The absence of a complaint in writing as required by S. 195 (1) of the public servant concerned or his superior makes the Court not of competent jurisdiction and, therefore, renders valueless the plea of previous acquittal as a bar to his retrial on the same facts after proper complaint is made. S. 537 (*a*) does not apply as in the first trial there cannot be said to be an error, omission or irregularity in a complaint but an absence of complaint altogether: 21 S.L.R. 1: 27 Cr.L.J. 1105. See also 56 C. 824 (830); 1938 N. 106; 1936 A.L.J. 1064; 15 Luck. 344: 1940 Oudh 241; A.I.R. 1948 Cal. 103: 48 Cr.L.J. 665; 1952 Cr.L.J. 821.

The complaint required by the section should be given before the prosecution is commenced. A Magistrate is not authorised to cause the attendance of the accused, or take any evidence against him, till the complaint is made. A Magistrate has no jurisdiction till the complaint is made and a conviction founded on evidence without jurisdiction is bad: 7 B.H.C.R. (Cr.) 61 (62); see also 22 C. 176; 26 C. 359; 15 M. 221: 2 M.L.J. 120; 7 M.H.C.R. 58; 29 M. 149: 3 Cr. L. J. 419; 17 M.L.J. 533: 31 M. 80; 28 C. 217: 5 C.W.N. 291; 40 C. 360: 13 Cr.L.J. 826; 9 C.L.J. 690; 13 C.L.R. 117; 25 I.C. 515; 14 Cr. L. J. 183: 4 P. R. 1913 (Cr.); 21 M. L.J. 753: 12 Cr.L.J. 406.

A different view has, however, been expressed in the following cases. Where the complainant was examined on oath by the Magistrate when cognizance was taken of the offence, absence of a complaint in writing has been held to amount only to an error, omission or irregularity as contemplated by S. 537, Cr.P.C.: 5 P.L.T. 505: 1924 P. 691. The term "complaint" in S. 195 is not used in the technical sense in which it is defined in S. 4 (1) (*h*). The intention of S. 195 is only that the Magistrate should not punish any person except at the instance of the public officer concerned or of his superior. Consequently, where a civil Court Amin who is obstructed in execution of his duty makes a complaint to the police and the Magistrate acting on the police report had before him at the time of convicting the accused under S. 186, I.P.C., the report of the Amin made to the police and the evidence of the Amin who had been called as a witness, S. 195 must be taken to have been complied with. At the most the complaint made to the Magistrate is irregular within S. 537 and the conviction cannot be set aside unless substantial injustice has been done: I.L.R. (1943) All. 29: 1943 A. 6, followed in A.I.R. 1951 Sau. 8 and A.I.R. 1956 Orissa 211. But see *contra*, I. L. R. (1954) Cut. 92 noted above. The Kurk Amin who is subordinate to the Tahsildar made a report of the occurrence and the Tahsildar sent it to the Sub-Divisional Officer with an endorsement submitting it for necessary action, suggesting that certain persons may be summoned and proceedings against them may be taken under Ss. 184-186, I.P.C.; Held, the endorsement made by the Tahsildar amounted to a complaint and was sufficient to satisfy the requirements of S. 195 (1) (*a*), Cr. P. C.: 10 O. W. N. 553: 1933 O. 281. Where

only a charge-sheet under S. 188, I.P. Code, signed by the Magistrate who promulgated the order under S. 144, Cr. P. Code, as also the District Magistrate was filed but not a separate complaint, Held, that although S. 195, Cr. P. Code, required a complaint and in the definition of a complaint a police report was excluded, the purpose of the complaint was served in the case by the signing of the charge-sheet and that the trial of the offence under S. 188, I.P. Code, was with jurisdiction: I.L.R. (1949) Nag. 976: A.I.R. 1950 Nag. 12.

8. Objection to cognizance of offence by Magistrate owing to absence of complaint.—When may be taken.—Objection to the very cognizance of an offence by a Magistrate owing to the absence of a complaint by Court or other authority under this section, ought to be raised before the trial Court itself as a preliminary objection, and if raised should be considered as a preliminary objection: A.I.R. 1954 Mad. 561: 1954 Cr.L.J. 799, followed in (1957) 2 Andh. W. R. 368: (1957) M.L.J. (Cri.) 603 (Accused can raise preliminary point of jurisdiction before he is charged). But see A. I. R. 1955 Ajmer 45. The question whether the prosecution was defective for want of proper complaint is a part of the accused's defence and should not be permitted to be argued as a preliminary contention in the case. The prosecution should be asked to lead evidence and when the accused enters on his defence, the question of complaint being necessary should also be considered. *Ibid.*

The provision in S. 195 that no Court shall take cognizance except on a complaint in writing, being a mandatory provision is a matter of jurisdiction which can be allowed to be taken for the first time in revision: 1957 All. W.R. (H.C.) 552.

9. Proper order in case of absence of proper complaint.—Where a Magistrate takes cognizance of the offence in the absence of a proper complaint, all the subsequent proceedings are void and the proper order in such a case is to return the charge-sheet to the police and not to acquit the accused: A.I.R. 1955 Sau. 10.

10. Facts disclosing offence requiring complaint and also other offences—Trial and conviction for other offences—Validity.—When a complaint sets forth certain facts disclosing minor offence and also a graver offence, the prosecution should ordinarily be for the graver offence. If, in entertaining such a complaint, there is a legal bar to taking cognizance of the graver offence by reason of the want of a complaint by the Magistrate, the legal consequence should not be allowed to be evaded by confining the case to the minor offence alone and disposing of it accordingly. It was held, however, that the complaint in the case disclosed not only a false charge made to the police but also a false charge made to the Magistrate on the strength of the same facts. Such a case could not be taken cognizance of without a written complaint by the Magistrate as required by S. 195 (1) (*b*) of the Cr. P. C.: 54 M. 1018: 1931 M. 702; 61 M.L.J. 770, approving 56 M.L.J. 208; 44 C. 650; 53 C. 824; 53 M.L.J. 455; (1948) 1 M.L.J. 448; A.I.R. 1954 Mad. 561; 4 P. 323 and 6 R. 578; (1962) 2 M.L.J. 285: (1962) M.L.J. (Cri.) 473 (Complainant cannot evade requirements of law by prosecuting accused for offence not requiring complaint whether such offence constitutes the major or the minor one). When the Code provides that the Court shall not take cognizance of certain offences without complaint from a public servant, it is not open to a Magistrate to ignore this provision by the device of instituting the case under another section of the Penal Code. Where a Magistrate took cognizance of an offence under S. 225-B, I.P.C., and held that having done so, he was entitled under S. 238, Cr. P. C., to convict the accused under S. 173, I.P.C.; which he regarded as a minor offence of the same character as that for which a penalty was provided under S. 225-B, I.P.C.: Held, that the conviction was illegal: 47 A. 114: 1925 A. 129.

In the case of offences under Ss. 182 and 211, Penal Code, proceedings should be taken under S. 211, I. P. C.: (1912) 1 U.B.R. 134: 13 Cr. L.J. 576; 7 B. 184. If a graver offence under S. 211, I.P. Code, is disclosed from the facts stated in a complaint, the condition laid down in S. 195 (1) (*b*) for taking cognizance of such a case cannot be evaded by electing to name a lesser offence under another section, *viz.*, S.182, I.P. Code, which is more general. It would be highly improper to allow such a device to be used to defeat the statutory provisions of S. 195: 47 Bom. L.R. 664: I.L.R. (1945) Bom. 1056; A.I.R. 1946 Bom. 7, followed in A.I.R. 1952 Sau. 67: 1952 Cr.L.J. 1084; A.I.R. 1954 Mad. 561: 1954 Cr.L.J. 799 (Complaint against Police-Inspector-Magistrate discharging Inspector in the case—Charge-sheet filed against complaint under S. 47,

Madras District Police Act—Held the case fell within S. 211, Penal Code and S. 195 (1) (*b*) of Cr.P. Code applied—Held, also that assumiing the case fell within S. 182, Penal Code or even S. 47, Madras District Police Act, provisions as to the necessity for a complaint by the Magistrate could not be evaded by prosecuting the complainant under S. 47 of the Police Act or S. 182, Penal Code, because the facts in the case also constituted an offence for which such a complaint was necessary). But lhe Calcutta High Court, in 5 C. 184, has held that it is open to the Court to convict under the minor offence under S. 182, I.P.C., even though the major offence under S. 211 has been committed. An offence under S. 211 must always include an offence under S. 182 and a Court may convict of the minor offence, if it so chooses. In 5 C.W.N. 727, it was held that a false charge of theft having been laid before the police, there should be a prosecution under S. 211 and not under S. 182. The decision purports to have been based on 17 C. 574, but it does not appear that the Full Bench in that case laid down any such proposition. What the Full Bench decided was that a person, who sets the criminal law in motion by making a false charge to the police of a cognizable offence, institutes criminal proceedings within the meaning of S. 211, Penal Code. The difference between an offence under S. 182, and an offence under S. 211 was noticed in 19 B. 717. Every false charge made to the police is not necessarily an offence under S. 211. If the intention to injure is absent, then the offence falls under S. 182 and there is no reason why, if the prosecutor is unable or unwilling to prove intention, that is to say malice he should not be permitted to take a conviction under S. 182: 5 P. 33 (39): 1925 P. 717.

Where the offence committed really falls under S. 471, I.P.C., it is not possible to reduce the charge to one under S. 474 and prosecute the accused without a complaint under S. 476: 111 I.C. 433 following 19 C.W.N. 125 and 44 C. 970. The decision in 111 I.C. 433 was followed in A.I.R. 1949 Cal. 632: 51 Cr.L.J. 97 (act amounting to offence under S. 188, I.P.C.—Prosecution for some other offence without complaint of public servant was held not permissible). This latter decision has, however, been overruled by a Full Bench which has held that Ss. 195 to 199, Cr.P.C., deal with the requisites for the prosecution of certain specified offences, that the provisions of those sections must be limited to prosecutions for the offence actually indicated and that they do not apply to all offences disclosed by facts which would give rise to any of the offences specifically indicated in them: 56 C.W.N. 1: A.I.R. 1951 Cal. 133 (F.B.). Approving this Full Bench decision, their Lordships of the Supreme Court say that S. 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section but that the provisions of that section cannot be evaded by resorting to devices or camouflage, and that the test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which complaint of the Court or of the public servant is required. They have held that if the facts disclose offences falling under Ss. 182, 297 and 500, I.P.C., the accused can be prosecuted for the two latter offences without a complaint under S. 195, Cr.P.C.; 1953 S.C.R. 836: 1953 S.C.J. 405: A.I.R. 1953 S.C. 293; followed in 28 Cut. L.T. 417; I.L.R. (1962) Cut. 610. (Where in a single transaction distinct offences are committed for some of which a complaint is necessary under S. 195 (1) (*a*), the Court is not precluded from taking cognizance of offences for which no such special complaint is necessary); 26 Cut. L.T. 148: 1961 (1) Cr.L.J. 132 (1): A.I.R. 1961 Orissa 14 (Same facts constituting offences under Ss. 186 and 353, I.P. Code, but offence under S. 504, I.P. Code, distinct—First two offences held required complaint under S. 195 but not offence under S. 504); 1962 (1) Cr.L.J. 240: A.I.R. 1962 All. 150 (Falsification of public record (false entry in birth and death register) by public servant—Offences under Ss. 193 and 218, Penal Code are distinct—Prosecution of public servant for offence under S. 218 alone without complaint not barred); 1963 (1) Cr. L. J. 781: A.I.R. 1963 Mys. 153 (Facts disclosing distinct offences under S. 182 and Ss. 471 and 474, I.P.C.—Charge-sheet by police in respect of offences under Ss. 471 and 474, I.P.C.—Magistrate is competent to take cognizance—Absence of complaint of public servant concerned in respect of offence under S. 182, I.P.C. held no bar); (1963) 4 Guj. L.R. 647: 1963 (2) Cr.L.J. 558 (offences under Ss. 467, 471 and 380, I.P.C.—In absence of complaint by Court, conviction under Ss.467 and 471 is bad but not conviction under S. 380); A.I.R. 1964 All. 103 (Prosecution under Ss. 448 and 454, I.P.C. No charge under S. 182, I.P.C.—Proceedings vitiated for want of complaint). Where in disobedience of an order under S. 145, Cr.P.C., the accused tresspasses into the field of the complainant and commits the offences under Ss. 188, 447, 506, 323 and 379, Penal Code, the offences under Ss. 188 and 447 cannot be tried except upon a complaint of the Magistrate, who had passed as order

under S. 145, Cr.P.C., or his superior. The act of trespass (S. 447) itself constituted disobedience of the order under S. 145, Criminal Procedure Code, an offence failing under S. 188, Penal Code. But offences under Ss. 506, 323 and 379 can be tried as distinct offences, because the ingredients of these offences, are not the same as those of an offence under S. 188: 1958 Cr.L.J. 1378: A.I.R. 1958 Andh. Pra. 718; 1963 B.L.J.R. 211 (offences under Ss. 188 and 379, I.P.C—Court can take cognizance of latter offence even in absence of complaint by public servant). Order under S. 144 restraining *A* from interfering with possession of *B's* land—*A* forming unlawful assembly and trespassing *B's* land—Prosecution of *A* under Ss. 143, 144 and 144/114, Penal Code, without complaint from Magistrate whose order is violated, not bad: 68 Cal. W.N. 710: 1964 (2) Cr.L.J. 405: A.I.R. 1964 Cal. 436. But when the facts disclosed primarily and essentially an offence under S. 188, I.P.C., the provisions of S. 195 (1) (*a*) cannot be evaded by the fact that the charge-sheet contained also other sections of the Penal Code, which were merely ancillary to the same and which do not require a complaint in writing: 25 Cut. L.T 528: I.L.R. (1959) Cut. 555.

There is no violation of S. 195 when a charge is made under S. 353, I.P.C., without the complaint of the public servant concerned, simply because it involves a minor offence under S. 186, I.P.C.: 1955 Andhra W.R. 465. Where certain persons are prosecuted under S. 143, read with S. 188, Penal Code, for the defiance of an order passed under S. 144, Cr.P. Code, the real offence committed is one under S. 188, I.P. Code, and the accused cannot be tried for a minor general offence like the one under S. 143, I.P. Code, without a proper complaint under S.195 (1) (*a*); (1948) 1 M.L.J. 448: A.I.R. 1948 Mad. 474; 17 Cut. L.T. 80: A.I.R. 1951 Orissa 84 (joint trial for offences requiring complaints and offences not requiring complaint. Facts constituting offence inextricably intertwined. Absence of complaint vitiates whole trial); 1953 N.L.J. 470: A.I.R. 1954 Nag. 30 (offences falling under S. 195 (1) (*a*) and outside it. Entire proceedings vitiated by illegality); 1953 N.L.J. 364: A.I.R. 1953 Nag. 290 (offence under S. 186, I.P.C., joined to offence under S. 353, I.P.C.—complaint under S. 195 (1) (*a*), Cr.P.C., necessary); I.L.R. (1954) Cut. 92: A.I.R. 1954 Orissa 175 (Do.); A.I.R. 1955 Sau. 10 (when offence primarly committed is one under S. 186, I.P.C. accused cannot be convicted under S. 332, I.P.C.); 1958 Raj. L.W. 245: A.I.R. 1958 Raj. 890: 1958 Cr.L.J. 567 (569) (No complaint for main offence-charge for another offence arising out of same facts inproper). Where the accused was clearly guilty of forging a promissory note but the object of the accused was to fabricate false evidence for the purpose of being used in a judicial proceeding and the accused got a fraudulent decree thereby and the complainant so stated it in the complaint, the necessity of a complaint under S. 476 cannot be dispensed with by the Court electing to try the accused for offences under Ss. 467 and 109, Penal Code: 55 M. 343: 1932 M. 253: 62 M.L.J. 735. See also 1950 A.L.J. 346: A.I.R. 1950 A. 465 (Facts disclosing offence under S. 193, I.P.C., complainant cannot choose to confine his case to an offence under S. 465, I.P.C.): (1946) 1 M.L.J. 466:47 Cr.L.J. 1034 (complaint disclosing offences under Ss. 193, 471 and 467, I.P.C., complainant cannot ask Court to take cognizance of offence under S. 467 alone).

Where a complaint is filed by a private person under sections of the Penal Code, which do not require a complaint of the Court under S. 195, but the complaint is such that it discloses other facts which constitute an offence for which a complaint of the Court is necessary, the principle to be followed in cases of this kind is not whether the complaint discloses other facts which constitute offences for which no complaint of the Court is necessary as well as facts for which a complaint of the Court is necessary, but whether there is or is not an evasion of the provisions of S. 195; and the test whether there is evasion or not is whether the facts disclose primarily and essentially an offence for which the complaint of the Court is required. The accused, who was entitled to some amount on a decree on an award on disputes between him and the complainant in partnership business, obtained possession of a copy of the decree from the possession of complainant, on which was entered full satisfaction of the claim of the decree, by falsely representing to him that he wanted it to show to other partners in their business, and instead of returning the said copy to the complainant obtained in execution of the decree a further sum, fraudulently secreting or destroying the document dishonestly obtained by him by false representation. The complainant filed a complaint under Ss. 403, 409 and 420, Penal Code. The trial Magistrate while dismissing the complaint, held that the complaint disclosed primarily an offence under S. 210, Penal Code, for which a complaint of the Court was necessary. In revision it was sought by the complainant to bring the case under Ss. 403 and 477, Penal Code, also. It was held, that to prove an offence under Ss. 204 and 477 proof of an offence under S.210,

Penal Code, was necessary and it required a complaint of the Court. S. 403 was also held inapplicable to the case and the facts primarily and essentially disclosed an offence under S. 210, Penal Code, and it was "primarily and essentially" the offence complained of. The other offences alleged were merely subsidiary to that offence, the alleged secretion, cheating and misappropriation, being in fact all meant for the purpose of obtaining the fraudulent decree which being the principal offence required a complaint of the Court: 38 Cr. L. J. 742: A. I. R. 1937 Sind 81: 29 S.L.R. 356: 37 Cr.L.J. 1007: 1936 Sind 123; A. I. R. 1944 Sind 130; 229 I. C. 617: 48 Cr.L.J. 470. Where the Sub-Divisional Magistrate has found that there was conspiracy to commit forgery and extortion, and the Subordinate Judge has made a complaint of a conspiracy to commit forgery and extortion and the complainant himself complained of forgery and extortion, merely because it can be said on the facts that the offences of cheating and of conspiracy to cheat may also have been committed, the necessity of a complaint by a Court or the consent of the Local Government, as the case may be, does not cease to be necessary: I. L. R. (1942) Kar. 12: A. I. R. 1942 Sind 62. An Amin making a false return on an execution process entrusted to him in the course of judicial proceedings commits an offence punishable under S. 193, I. P. Code. A complaint of that offence must be made by the Court under S. 195 (1), Cr. P. Code, and no complaint by a private party, is maintainable. Though the act complained of may also fall under S. 167, I.P. Code, a private complaint cannot avoid the provisions of S. 195, Cr.P. Code, by making his complaint for a lesser offence for which a complaint by Court is not necessary: I.L.R. (1945) Mad. 459: (1944) 2 M.L.J. 157. The accused was a vakil's clerk. He was entrusted by the complainant with a promissory note for filing a suit. The suit was in fact filed sometime later; the promissory note contained an endorsement of payment which, if true, would have saved limitation but the Court found it was a forgery. The complainant alleged that the endorsement was forged by the clerk to cover up his own default in not having filed the suit in time and prosecuted him under S. 471, Penal Code. No complaint had, however, been made by the Court which dismissed the suit on the promissory note. It was held that the facts alleged constituted an offence under S. 193, Penal Code, and the necessity of a complaint under S. 195 (1) (*b*) of the Cr.P.C. from the Court, which tried the suit, could not be dispensed with by styling the prosecution as one under S. 471, Penal Code, which, the accused not being a party or witness to the suit, would not require a complaint under S. 195 (1) (*c*) of the Cr. P.C.: 1933 M. 413: 37 L.W. 547; (1954) 1 M.L.J. 650: 1954 M.W.N. 231. Dishonest removal of movable property after attachment has been effected would constitute an offence either under S. 379, 424 or 206 of the Penal Code and as an offence under S. 206 of the Penal Code, is one which cannot be entertained without a complaint of Court, a proceeding without such complaint is invalid and vitiates the trial, even though the accused might have been convicted not under S. 206 but under S. 424 of the Penal Code: 1933 M.W.N. 722. See also (1942) 2 M.L.J. 246: A.I.R. 1942 Mad. 675 (1). But see (1947) 2 M.L.J. 119. While certain cattle were in the custody of sureties after an attachment before judgment, the owner of the cattle along with others went in a body and committed dacoity armed with deadly weapons and forcibly removed them. On a question whether a written complaint of the attaching Court under S. 195 (1) was necessary even before an enquiry into the charge of dacoity could be made, Held, that the elements constituting the offences under Ss. 206 and 395, I. P. C., are not only not identical but the one under S. 395 is a much graver offence involving certain additional ingredients and it cannot be said that for such an offence the sanction of the civil Court is necessary for the prosecution of the accused: (1947) 2 M.L.J. 119: A.I.R. 1948 Mad. 115.

Where in execution of a decree, certain property was attached and entrusted to the custody of the complainant and there was a scuffle in which the complainant was assaulted and insulted in respect of which he filed a complaint under Ss. 323, 352 and 504, I.P.C., and there was no complaint by the executing Court, it was held, that the complaint was maintainable and the mere fact that the facts mentioned in the complaint constituted an offence under S. 183 or 186, I. P. C., did not render the complaint illegal. It was not, therefore, necessary for the complainant to move the Court before filing a complaint: 1935 O. 331: 36 Cr. L. J. 594. Where when all the facts of a complaint were considered, it was clear that the only section which was appropriate was S. 211, I.P.C., and a compliant under that section could in the circumstances of the case be made by a private person, the Court must regard the complaint as being one under S. 211, I.P.C., primarily and is not debarred from trying the case under that

section simply because the complaint also disclosed a minor offence under S. 182, I.P.C., for which a written complaint from a public servant was necessary: 59 M. 1083: 71 M. L. J. 485. A suit for the compulsory registration of a sale deed was dismissed by the civil Court. The alleged executant of the sale deed then filed a criminal complaint against the writer and attestors of the sale deed who were not parties to the civil suit praying for their prosecution for an offence under S. 476, I.P. Code, on the ground that they committed forgery with the object of grabbing the property to themselves. The plaintiff in the suit was not included in the complaint, but it was stated that the civil Court was being asked to make a complaint. It was pleaded that S. 195 (1) (*b*), Cr.P.Code, was a bar to the private complaint, as it diclosed an offence under S. 193, I. P. Code. Held, that in order to attract the provisions of S. 195 (1) (*b*) the allegations in the complaint must be looked to; that the allegations in the present complaint did not make out an offence under S. 193, I.P. Code, so as to attract S. 195 (1) (*b*) and that there did not seem to be any attempt to evade the provisions of S. 195 (1) (*b*). The private complaint was not therefore barred: A.I.R. 1945 Mad. 345: (1945) 1 M.L.J. 465. Where the accused was charged under Ss. 193, 211, 218 and 220, Penal Code, in respect of proceedings under S. 109, Cr.P.C., without the complaint being filed by the Magistrate before whom the proceedings were pending, it was held that the charges under Ss. 193 and 211, Penal Code, should be quashed as no Court could take cognizance of these offences except on the complaint in writing of the Magistrate in whose Court these proceedings were pending or of some other Court to which the Magistrate in question was subordinate and that the offences under Ss. 218 and 220, I.P.C., did not fall within the purview of S. 195, Cr.P.C. These offences were distinct from offences under Ss. 193 and 211, I.P.C., and the prosecution had to prove facts which were distinct from the facts constituting offences under Ss. 193 and 211. Hence no complaint was necessary for continuation of the proceedings under Ss. 218 and 220, I.P.C.: 39 P.L.R. 1011: A.I.R. 1937 Lah. 802. See also A.I.R. 1951 Cal. 581:52 Cr.L.J. 1580 (offence disclosed coming under different sections of I.P.C.—Some requiring and others not requiring complaint—Prosecution competent to bring offence under section not requiring complaint); 57 Bom. L.R. 1056: A.I.R. 1956 Bom. 326: 1956 Cr.L.J. 603 (committal order with respect to offences under S. 471 read with Ss. 467 and 34, I. P.C. and also under S. 420 read with S. 34, I. P. C.—Committal order with respect to former offences alone liable to be quashed as there was no complaint under S. 195 (1) (*c*)).

11. Private complaint of defamation not barred although facts alleged constitute offence specified in section.—There is nothing in Ss. 195 and 476, Cr.P. Code, which prevents a man from making a complaint for defamation in respect of a statement made during judicial proceedings. The sanction of the judicial authority before whom the statement is made is not necessary. Further according to S. 198, it is only the person defamed who is given the sole right to file a complaint for defamation and hence the judicial authority before whom the statement is made is not competent to file a complaint for prosecution of the person concerned for making the defamatory statement: I.L.R. (1940) All. 314 : 1940 All. 246. The mere fact that allegations constituting an offence of defamation are contained in a petition to a public servant or a Court, is *per se* no ground for holding that S. 195, Cr.P. Code, is a bar to the cognizance of the offence. The question whether the facts alleged in a complaint really constitute an offence falling within the provisions of S. 195, Cr.P. Code, or not must depend upon the circumstances of each case. But if the facts alleged, *prima facie* constitute the offence under S. 500, C.P. Code, that offence can be taken cognizance of on a complaint by the aggrived person: 44 P.L.R. 7 : A.I.R. 1942 Lah. 76. The provisions of S. 195, Cr.P. Code, do not apply to defamation, and a person, who is defamed by a witness when in the witness-box, is at liberty to file a complaint against the defamer under the provisions of I.P. Code. The mere fact that the defamation is committed in or in relation to criminal proceedings in a Court is no reason for requiring the sanction of the Court or for requiring the Court to prefer a complaint: I.L.R. (1942) Mad. 158 ; (1941) 2 M.L.J. 618 : 1942 M. 19, approving 1933 M.W.N. 1263, and overruling (1939) 1 M.L.J. 412 : 1939 M. 368; (1939) 1 M.L.J. 614 : 1939 M. 493; (1940) 1 M.L.J. 689 : 1940 M. 677 and (1940) 2 M.L.J. 491 : 52 L.W. 350. To the same effect are the decisions in 10 Luck. 277 ; 1935 O. 6; I.L.R. (1937) N. 338 : 1936 N. 241; I.L.R. (1937) N. 425 : 1937 N. 138; A.I.R. 1938 S. 129 : 39 Cr.L.J. 736. A Full Bench of the Madras High Court has approved the decision in I.L.R. (1942) Mad. 158 : See I.L.R. (1951) Mad. 661 : (1950) 2 M.L.J.686 (F.B):—Per Balakrishna Aiyer, J:—Where an alleged offence falls both under Ss. 193 and 500, I.P.C.; a complaint of the Court is not necessary to

enable a Magistrate to take cognizance of a complaint under S. 500, I.P.C., alone. Per Govinda Menon, J.:—Even when the Court before which the alleged defamer had given evidence finds that the deposition is false, it is open to the person defamed to institute proceedings under S. 499, I.P.C., without the Court filing a complaint in accordance with the provisions of S. 195, Cr.P.C. All the more so is such a complaint unnecessary where a defamatory statement is made by a witness in the course of a judicial proceeding and the Court has not adjudicated upon the truth or falsity of it, where the Court was deprived of an opportunity of so adjudicating; in all such cases it is open to the party defamed to take proceedings under S. 499, I.P.C. : *Ibid.* Where a particular set of acts constitutes an offence under S. 211, I.P. Code, and also an offence under S. 500, I.P. Code, the complainant is entitled to prosecute the offender for the offence under S. 500 without at the same time asking for sanction under S. 195, Cr.P. Code, for prosecution of the offender under S. 211, I.P. Code. The complaint under S. 500, I.P. Code, cannot therefore be dismissed on the ground that the facts alleged disclose also an offence under S. 211 and no sanction has been obtained as required by S. 195, Cr.P. Code: I.L.R. (1951) Bom. 422 : A.I.R. 1951 Bom. 289, following 48 C. 388 (F.B.) and A.I.R. 1938 Rang. 232 (F.B.). Ss. 195 to 199, Cr.P. Code, deal with the requisites for the prosecution of certain specified; offences and the provisions of those sections must be limited to prosecutions for the offence actually indicated. They do not apply to all offences disclosed by facts which would give rise to any of the offences specifically indicated in them. Accordingly a prosecution for defamation under S. 500, I.P. Code, based on the false information given to a Police Officer with intent that the latter should act upon it, is maintainable, although the facts disclose an offence under S. 182, I.P. Code, and no complaint is filed by the Police-officer as required by S. 195 (1) (*a*), Cr.P Code: 56 C.W.N. 1 ; A.I.R. 1951 Cal. 133 (F.B.), approviug 24 C.W.N. 982. After the Full Bench decision of the Calcutta High Court, the decisions of that Court to the contrary, (*e.g.*) 231 I.C. 37 and A.I.R. 1950 Cal. 77 are not good law. This Full Bench decision has been approved by the Supreme Court which has held that the ingredients of the offence under S. 182, I.P.C., cannot be said to be the ingredients for the offence under S. 500, I.P.C., and that it cannot be said that the offence relating to giving false information relates to the same group of offences as that of defamation : 1953 S.C.R. 836 : 1953 S.C.J. 405 : A.I.R. 1953 S.C. 293. See A.I.R. 1954 Sau. 50 (Complaint by aggrieved party on charge both under S. 193 and S. 500, Penal Code—Court can take cognizance of latter offence).

12. Addition of offence specified in section without fresh complaint.—Ss. 476 and 195, Cr.P.C., are intended really to prevent indiscriminate prosecutions under the various sections mentioned therein. Once the bar is removed, there is no difference between the cases mentioned in Ss. 476 and 195 and any other case, *e.g.*, if a complaint is filed under S. 471 and it appears that some other offence also has been committed, it is not necessary to have a fresh complaint: 15 P.L.T. 694 : 1934 P. 536. Where the original complaint was abetment by conspiracy and the Magistrate acting on the facts disclosed in the evidence for the prosecution added a second charge of abetment of forgery in an account book produced before the Insolvency Court in pursuance of the alleged conspiracy, held, that the complaint of the Insolvency Court was not necessary for the second charge was in respect of an act done in pursuance of the conspiracy mentioned in the original complaint. S. 235 of the Code also permits a joinder of such charges: 27 Cr.L.J. 669 : 1926 R. 53. Even under the old section it was held that where a person could be charged with offences under one or other of two sections of the Penal Code, the sanction given in respect of one offence covered also an offence under the other section, on the same facts: 4 C. 712; but see 18 W.R. (Cr.) 67. See also Note 7 under Heading VII under S. 476.

13. Conviction for different offence specified in section.—Where the complaint sets out all the facts which constitute the offence, it does not matter whether the complainant thinks that the offence committed is punishable under S. 211 or S.182, I.P.C. There seems to be no general principle of law that where there is a complaint under S. 211, I.P.C., there cannot be a conviction under S. 182, I.P.C.: (1942) 1 M.L.J. 382 : 1942 M. 513. But see the following cases. Under S. 195, Cr.P. Code, no Court is in a position to take cognizance of an offence—that is of a particular offence—which has not been specifically pronounced by the Court under S. 476 of the Cr.P. Code, to be one which it is expedient in the interests of justice to have an enquiry into. Hence when a complaint under S. 476, is made of an offence under Ss. 218 and 194, I.P. Code, but the accused is convicted under S. 193, I.P. Code, the conviction could not be sustained. There

has been no complaint within the meaning of S. 476, Cr.P. Code, of any offence under S. 193 of the I.P.Code, and therefore the condition of S. 195 (1) (*b*), Cr.P.C. is not complied with. The complaint under S. 476, Cr.P. Code, is a special complaint which has to comply which a number of strict conditions before it becomes a complaint under that section at all for the purpose of S.195 (1) (*b*). Sub-S. (2) of S. 476 only means that where a Magistrate receives a complaint which qualifies under S. 476 (1), he should then proceed from that ponit onwards as if it was a complaint under S. 200, Cr.P. Code. This cannot alter the fact that the only thing that the Magistrate or any other subsequent Court, can inquire into, is the specific offence which the original complaining Court has said that, in its opinion, it is expedient in the interests of justice to inquire into: I.L.R. (1945) A. 668 : A.I.R. 1945 All. 397, followed in A.I.R. 1956 Madh. B. 193 : 1956 Cr.L.J. 1072 (complaint under S. 194, I.P.C.—Conviction under S. 193, I.P.C., held invalid). In this case the ruling in A.I.R. 1948 All. 121, in which Dayal, J., has observed that when a complaint has been made under S. 195, the criminal Court is free to frame any charge on the basis of those facts, was dissented from. Where prosecution of the accused is ordered only under S. 471, I.P.C., but he is tried and convicted under Ss. 471 and 467, I.P.C., conviction under the latter sections is not sustainable: 1 Luck. 523: 1926 O. 485; A.I.R. 1937 Pesh. 67 : 38 Cri.L.J. 748 (Complaint under S. 193, I.P.C.—Conviction also under S. 467, I.P.C., held illegal). See also Note 7 under Heading VII under S. 476.

14. Conviction for different offence not specified in section.—While setting aside a conviction of an accused person under S. 186, I.P.C., for want of complaint under S. 195 (1) (*a*), Cr.P.C., he can be convicted under S. 143, I.P.C., without such complaint because, (1) when compared with the offence under S. 186, I.P.C., an offence under S. 143, I.P.C., cannot be considered a minor offence. (2) the prosecution of an offence under S. 143, I.P.C., which does not require the making of a written complaint by a public servant, is not within any statutory prohibition. (3) neither S. 195, Cr.P.C., nor any other provision of law lays down that if in the course of the commission of an offence which requires sanction for prosecution other offences are committed, that cannot be proceeded with: 62 Punj.L.R. 73: 1960 Cr.L.J. 987: A.I.R. 1960 Punj. 356.

15. Prosecution of persons not named in complaint.—See Note 6 under Heading VII under S. 476, *infra*.

16. Complaint—Meaning of.—See also Notes under S. 4 (1) (*h*), *supra*. The words "complaint in writing" appearing in S. 195 (1) (*a*) refer to a formal complaint as defined in S. 4 (1) (*h*) by the public servant concerned or of his superior: A.I.R. 1954 Nag. 30: 1954 Cr.L.J. 15; A.I.R. 1954 Orissa 175: 1954 Cr.L.J. 950; A.I.R. 1955 Bom. 315: 57 Bom.L.R. 151; 1958 Raj.L.W. 245: A.I.R. 1958 Raj. 89: 1958 Cr.L.J. 567, dissenting from A.I.R. 1943 All. 6: 44 Cr.L.J. 165 and A.I.R. 1951 Sau. 8: 1952 Cr.L.J. 850 in which it was held that those words did not refer to a complaint as defined in S. 4 (1) (*h*) and what they really meant was that the proceedings culminating in a complaint or chalan before the Court should have been started at the instance of the public servant concerned or of his superior.

Where a Tahsildar submitted a report to his superior Executive Officer, the Sub-Divisional Officer, proposing to lodge a complaint under S. 186, I.P.C., against a certain person and the Sub-Divisional Officer endorsed on that report that a complaint might be lodged under S. 183, I.P.C., and the Tahsildar then forwarded the papers to a Magistrate for further action. Held, that the communications between the Tahsildar and the Sub-Divisional Officer do not constitute a complaint in writing made by a public officer to a Court having jurisdiction in the case under S. 195, Cr.P.C.: 39 Cr.L.J. 58: A.I.R. 1938 N. 106. If there has been an allegation that an offence has been committed by a person known or unknown made orally or in writing and addressed to a Magistrate with a view to his taking action under the Code of Criminal Procedure it will amount to a complaint. Where however the District Magistrate granted sanction believing that the Superintendent of Police would thereby be enabled to prosecute the applicant under S. 182, I.P.C., held, that there was no complaint for the prosecution of the accused and that the conviction under S. 182, I.P.C., was unsustainable: 1932 A.L.J. 155: 1932 A. 190. The order of the District Magistrate ran as follows:—"Prosecution under S. 185, I.P.C., is sanctioned. Case to *S.*" it was held that it cannot be deemed to be a "complaint": 11 O.W.N. 473: 1934 O. 186. Where a Sub-Divisional Magistrate acting on information that there was a breach of an order passed by him under S. 144, Cr.P.C., sent up a report

to the District Magistrate and suggested the prosecution of persons who had committed the breach and the District Magistrate passed an order sanctioning the prosecution of the persons concerned, it was held that the report sent to the District Magistrate could not be treated as a complaint under S. 195 (1), Cr.P.C.: 15 Luck. 344: 1940 Oudh 241. A report submitted by a subordinate police-officer to a higher officer which is later on endorsed to be sent to Court does not amount to a complaint as contemplated by S. 195: 1957 All.W.R. (H.C) 552. Where a Sub-Inspector addressed and sent to the Superintendent of Police a communication headed as "Report made by Sub-Inspector," stating that a certain village headman named therein was guilty of an offence under S. 177, I.P.C., and concluding with a request for permission to institute a case against him, and the Superintendent of Police forwarded this to a Magistrate "for information and necessary action", it was held that the communication made by the Sub-Inspector was nothing else than merely an information report sent to the Superintendent of Police and the communication forwarded by the latter to the Magistrate did not amount to a complaint within the meaning of S. 195, Cr.P.C.: 1936 A.L.J. 1064: 1936 A. 788. The report of a police-officer: 27 C. 452: 4 C.W.N. 594; A.I.R. 1955 Mys. 1; A.I.R. 1958 Raj. 89; 1959 A.L.J. 620 (See also 6 O.C. 1; 14 C.W.N. 765: 11 Cr.L.J. 356); a mere suggestion by a Superintendent of Police to a Magistrate that the latter should take steps to prosecute a person who made a false charge: 5 O.C. 164; mere information of an offence under S. 186, I.P.C., given to a police-officer in-charge of an outpost: 16 P.L.T. 295: 1935 P. 214 (S.B.); charge-sheet filed by Police under S. 186, I.P.C., on report made to them by the public servant concerned: 1952 Cr.L.J. 821; A.I.R. 1955 Mys. 1 (charge-sheet under S. 182, I.P.C.); 1959 A.L.J. 620 (charge-sheet by police under S. 188, I.P.C., on report by public servant). Police report submitted to the District Magistrate and countersigned by him: A.I.R. 1950 Ajmer 23; 51 Cr.L.J. 935, do not amount to a complaint.

See, however, the undermentioned rulings. The definition of 'complaint' as given in S. 4 (1) (*h*), expressly excludes the report of a Police Officer but that definition would apply only if no different intention appears from the subject or context. Consequently that definition cannot be mechanically applied in construing other provisions of the Cr.P.C. An intention other than that given in S. 4 (1) (*h*) appears from the context of S. 195 (1) (*a*) and the expression 'complaint' in the latter section is used in the ordinary sense of a report in writing disclosing an offence and not in the technical sense of excluding the report of a police-officer as defined in S. 4 (1) (*h*). If such reports are not held to be complaints within S. 195 (1) (*a*), the offences described in Ss. 172 to 188, Penal Code, committed in relation to a police-officer can never be brought to trial in as much as it is legally impossible to contemplate a complaint as defined in S. 4 (1) (*h*) for the purpose of S. 195 (1) (*a*) where the concerned public servant is a police-officer. His superior authority will also be a police-officer: I.L.R. (1956) Cut. 470: 22 Cut.L.T. 458: A.I.R. 1956 Orissa 211: 1956 Cr.L.J. 1420 (1421), relying on 40 C. 360, A.I.R. 1943 All. 6 and A.I.R. 1951 Sau. 8. Hence, offences under S. 176, I.P.C., can in accordance with the terms of S. 195 (1) (*a*), be taken cognizance of by a Court only on the report of a Police Officer who is the public servant, concerned. *Ibid.* Where the Village Magistrate to whom the accused gave a complaint of theft, sent his usual report to the police and to the Sub-Magistrate and the police who took cognizance of the matter reported the same as false and subsequently filed a charge-sheet against the acccused, held, that the charge-sheet amounted to a valid complaint as required by S. 195: (1942) 1 M.L.J. 382: 1942 M. 513. But the Rajasthan High Court in the case cited above, has observed that a Police Officer is entitled to make a complaint in Court in respect of offences mentioned in S. 195 (1) (*a*) and his complaint in the circumstances would not be a report but a complaint under S. 4 (1) (*h*)—See 1958 Cr.L.J. 567 (569).

17. Complaint must be "in writing".—The object of introducing the words "in writing" after the word 'complaint' in S. 195 and adding Cl. (*aa*) to S. 200, Cr.P.C., was to remove the inconvenience which might be felt if it was made incumbent on the Magistrate to examine the complainant when taking cognizance of an offence. As the provision regarding sanction was removed from S. 195, Cr.P.C., and as it was made obligatory for the public servant concerned to make a complaint instead of giving a sanction in order to prosecute a person for offences referred to in S. 195, Cr.P.C., it was thought that it would cause a good deal of inconvenience, if such public servant had to attend the Court and to appear before the Magistrate in order to lodge the complaint: 5 P.L.T. 505: 1924 P. 691. But see the following observations of Robinson, C. J.:

"By the recent amendment of the Code, the necessity for sanction to prosecute has been done away with altogether, and, in the place of that sanction has been substituted a complaint made by Court itself in writing. An addition has been made to S. 252, *infra*, to avoid the necessity for the examination of the complainant. That very necessary procedure is therefore omitted in such cases, and, that being so, it appears that the powers given by S. 476 should be strictly confined to those granted. It was not intended that the complainant should not be examined, except in the case where the accused had appeared before the Court as a party to the proceedings": 2 Rang. 374 (379): 1925 R. 28.

18. Principles guiding a Court in making complaint.—See also Notes under Heading IV under S. 476. A Judge making a complaint ought to apply his mind closely to the facts with a view to ascertain whether they really constitute an offence: 19 B. 362 (363). The making of complaint under this section is at the discretion on the Court before which the offence was committed or of the Court to which it is subordinate: 1 A. 17 (23) (F.B.). The discretion must be exercised judicially. There must be some ground on which the Court can act in making complaint. But it is for the Court to determine, in the exercise of its judicial discretion, whether the case is one which calls for an inquiry by a criminal Court: 14 Bom.L.R. 587: 13 Cr.L.J. 689; see also Per Oldfield, J., in 45 M. 928: 44 M.L.J. 774 (F.B.). S. 195 is expressed in the widest terms and vests in the Court an absolute and unqualified discretion. Not one title can be taken away from or added to the plain and express provisions of the legislature by any decision of the Court, nor can this discretion vested by the section in the Court be crystallised or restricted by any series of cases, and it remains free and untrammelled to be fairly exercised according to the exigencies of each case. When a tribunal is invested by an Act or by rules with a discretion, without any indication in the Act or the rules of the grounds upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view to indicate the particular grooves in which the discretion should run. When exercising discretion, the Court will be astute to see that there should be no abuse of the administration of criminal justice. Therefore no one should be permitted to use a penal law merely to satisfy his own private ends or personal spite: 41 C. 446: 15 Cr.L.J 49.

The test for the necessity of the grant of sanction (now making of complaint) under this section is not the character of the offender, but the character of the offence: 14 Bom.L.R. 362: 13 Cr.L.J. 527. Where an application for sanction (now for making of complaint) is made, the Court should consider whether there are good grounds for the application or whether it has been made solely to oppress and harass an adversary, and to prevent him from taking any further legal steps to which he may be entitled: 7 C. 208 (210): see also 2 M.L.T. 508; 3 C.W.N. 3 (4); 12 C.W.N. 3; 11 A.L.J. 313: 14 Cr.L.J. 389; 26 A. 1: 1 Cr.L.J. 120. It is the duty of a Court to make a complaint in every case that comes to its notice of an offence which cannot be tried except on the complaint of a Court, and there are only two reasons that can justify it in not doing so. One is that the offence is trivial, and the other that the evidence available is not sufficient to make a conviction probable: 27 Cr.L.J. 1010: 1926 Nag. 485.

The following principles have been laid down regarding the granting of sanction under the old law, and the same would apply, with necessary modifications to the making of a complaint by the Court under the new section:—(*i*) The Court should be satisfied that the prosecution is necessary in the public interests: 24 C.W.N. 102: 58 I.C. 349; 13 Cr.L.J. 637: 33 M.L.J. 545: 37 M. 564; see also 1923 P. 102 (2); 21 Cr.L.J. 787: 51 I.C. 515; A.I.R. 1930 Lah. 55. The discretion of the Court to grant or refuse sanction (or making of a complaint) should be exercised with caution and discernment to further the ends of justice and not to permit the use of the penal law to satisfy private ends or personal spite: 20 Cr.L.J. 541: 51 I.C. 781. A Court granting sanction does no more than say that, on the materials before it, it is not apparent that a prosecution would be against public interests or a mere indulgence of private spite. Where the Court is of opinion that the public interest would not be served by such a prosecution it is not debarred from refusing sanction even if there is a *prima facie* case. Per Coutts-Trotter, J., in 45 M. 928: 44 M.L.J. 774 (F.B.). (*ii*) There must be something more than a mere suspicion of guilt: 15 C.L.J. 337: 13 Cr.L.J. 291. (*iii*) There must be at least a *prima facie* case and a reasonable probability of conviction: 41 C. 446: 15 Cr.L.J. 49: 26 Cr.L.J. 1401: 1926 N. 141; 25 Cr.L.J. 119: 1924 Lah. 569; 59 I.C. 855: 22 Cr.L.J. 151; 23 C. 532; 4 L.B.R. 234: 7 Cr.L.J. 495; 1 L.B.R. 286; 1 C. 450 (455); 1 C.W.N. 400 (401); 12 M.L.J. 392; 12 M.L.J. 408; 2 Weir 188; 7 M. 224: 2 Weir 179 (180);

9 W.R. (Cr.) 3; 35 P.R. 1889 (Cr.); 12 C.W.N. 3; 11 C.W.N. 195; 7 Bom. L.R. 737: 2 Cr.L.J. 611; 15 C.L.J. 337: 13 Cr.L.J. 291; 6 A. 114; 12 P.R. 1905 (Cr.): 2 Cr.L.J. 66; 37 M. 564; 21 Cr.L.J. 767: 51 I.C. 515; 24 Bom. L.R. 45: 1922 Bom. 38; A.I.R. 1930 Lah. 55. Unless there is sufficient *prima facie* evidence and reasonable probability of conviction, the Court granting or upholding sanction will not be properly exercising the discretion vested in it by law, and the safeguard provided by law against vexatious or frivolous prosecutions of parties and witnesses would be rendered nugatory: 26 M. 116: 2 Weir 189; see also 26 A. 1; see also 3 C.W.N. 3 (4); 12 C.W.N. 3. Sanction should not be given, when there is no probability of conviction, with the object that sanction itself would operate as a punishment which, in the opinion of the authority granting it, the person deserves: 26 M. 116: 2 Weir 189; see 10 N.L.R. 177 which approves, 37 C. 250. But see the observation of Napier, J., to the effect that the proposition in 26 M. 116 that *prima facie* case or a reasonable probability of conviction must be apparent on the evidence before the sanction is accorded is evidently incorrect. There is no reason why the Court, to whom an application for sanction is made, should perform any of the acts that will fall within the scope of the Magistrate's duty if sanction is accorded, and the case ought not to go to the Magistrate with the opinion of the High Court that there is a *prima facie* case against the accused: 1915 M.W.N. 140: 16 Cr.L.J. 115. Mr. Justice Seshagiri Iyer, has criticised this view of Napier, J., at length in 32 M.L.J. 54 (59, 60), from which the following propositions may be inferred:—The Court, while granting sanction (now, while making a complaint) should consider certain rules of prudence, *viz.*, (1) chance of conviction being remote if prosecution is started, (2) prosecution not necessary in the interests of justice, being aimed at harassing opponent, (3) moral turpitude being slight though there may be chances of conviction, (4) granting of sanction leading to an abuse of the administration of Criminal Justice. The Court may take additional evidence if necessary. When sanction is granted for a false statement in an affidavit that the suitor owned large properties, but he had conveyed them already, and he stated that the transaction was benami and it was in evidence that he was consistently asserting his right to the properties, this is not a fit case for sanction: 32 M.L.J. 54: 18 Cr.L.J. 289; see also 4 P.L.J. 374: 20 Cr.L.J. 603. Where a District Judge is moved in his capacity as a public servant to whom a process-server is subordinate, to make a complaint under S. 183, I.P.C., against certain persons alleged in the process-server's report to have offered resistance to him, he must, in considering whether a prosecution is to be ordered or not have regard to the interests of public justice rather than to the gratification of private spite. Regard may also be had to the question whether the prayer for prosecution is a manoeuvre to obtain an undue advantage by embarrassing the defence in a pending civil proceeding. Another point which might well be considered is whether there is evidence of any criminal act against each individual person against whom it is proposed to take proceedings, and with reference to the general question whether there is a *prima facie* case at all, it may be examined whether the process-server was in fact following a lawful procedure: 38 Cr.L.J. 292 (2): A.I.R. 1937 P. 31. In the case of an offence under S. 188, Penal Code, sanction to prosecute should not be given unless the Magistrate thinks that all the materials necessary for consideration are present and unless he finds anything to show that the disobedience of the order (in this case under S. 144, Cr.P.C.) was likely to cause obstruction annoyance, etc.: 14 C.W.N. 234: 11 Cr.L.J. 49: 63 I.C. 865. A sanction under S. 195 must be based on materials on the record before the Court. Where there is nothing to show that the information given by the accused was false to his knowledge, sanction for prosecution of an offence under S. 182, I.P.C., should not be given: 20 Cr.L.J. 618: 52 I.C. 282. In the case of an offence under S. 180, I.P.C., sanction was granted on a police report stating the facts constituting the disobedience: 14 Cr.L.J. 292 19 I.C. 948. In the case of an offence under S. 175, I.P.C., the failure of an accused person called upon to produce a book in Court, where the book was unnecessary for the decision of the case, was held to be no ground for prosecuting him; see 5 I.C. 17: 11 Cr.L.J. 20.

19. Prosecution when suit pending.—See also Note 3 under Heading V under S. 476. Sanction (or complaint) for the prosecution of a witness for deposing falsely in a suit, which is still pending, is improper and undesirable: 21 C.W.N. 755: 18 Cr.L.J. 735; (1913) 1 U.B.R. 166: 14 Cr.L.J. 422. The following decisions bear on the propriety of granting sanction under the old section during pendency of proceedings. A Court may well hesitate to give sanction to a private person under S. 195 to prosecute his adversary, for an offence, during the pendency of a civil litigation out of which it has arisen: 13 C.W.N. 398. It is neither necessary nor desirable to give sanction to the

respondent in an appeal pending from a civil suit, to pursue a doubtful criminal prosecution pending the decision of the appeal which it has been ordered to be expedited. The proper procedure in such a case is to await the conclusion of the litigation and then to move the higher Courts to take action, if necessary, in the ends of public justice: 34 C. 848: 11 C.W.N. 712. In 26 M. 190 it has been held that the fact that an appeal has been preferred is no impediment to the institution of criminal proceedings on the strength of the sanction, though, as a general rule, it may be a reasonable ground for stay of proceedings by the Magistrate before whom the complaint has been preferred, pending the disposal of the appeal.

20. Stay of proceedings during pendency of civil litigation.—The principle referred to in 16 B. 729 that criminal proceedings should not go on, during the pendency of civil litigation regarding the same subject-matter, is not an invariable rule: 18 B. 581 (584); 13 C.W.N. 398. Where a subordinate Judge found a deed produced by a party to be forgery, and committed him to the Sessions under S. 478, *infra*, the High Court declined to stay the trial, until the disposal of a suit instituted by him to establish the genuineness of the deed: 18 B. 581 (584); see also 35 C. 909; 23 C. 610; 6 C. 308. Sub-S. (3) of S. 476 now gives discretion to the trying Magistrate to adjourn the hearing of the case until an appeal filed against the decision in the original judicial proceedings out of which the matter has arisen, is decided. See Notes under Heading IX under S. 476.

21. Whether application necessary for making complaint.—It was held under the old section that so far as the provisions of S. 195 (1) (*a*) were concerned, there was no necessity of any application for sanction: 17 C.W.N. 976: 14 Cr.L.J. 292. There is still less necessity now because the public servant himself must make the complaint. As regards Cls. (*b*) and (*c*) also, the words "whether an application made to it in this behalf or otherwise" in the present S. 476 which prescribes the procedure to be followed in such cases, imply that an application is not necessary for making a complaint. Even under the old section it was held in some cases that the grant of a sanction did not pre-suppose application made to the Court to give the sanction: 16 B.L.R. 947: 16 Cr.L.J. 107; 10 C.L.R. 41. But see below. Under the old section, it was the established practice of the Calcutta High Court to grant sanction only on a formal petition: see 4. C. 423: 14 Cr.L.J. 572. Besides an application was necessary in order that the Court may be satisfied that some person was willing to avail himself of the sanction and carry on the prosecution; see 27 C. 820; 4 C.W.N. 347; 18 A. 213; 13 Cr.L.J. 4: 13 I.C. 97; (1915) 2 U.B.R. 83; 20 C. 349; 20 C. 474; 23 P.R. 1901; 17 Cr.L.J. 69: 32 I.C. 651; 10 C.W.N. 222: 3 Cr.L.J. 112. In same cases it was held that where the Magistrate directed the prosecution of his own motion he acted under S. 476 and the procedure enjoined under that section should be followed: 10 I.C. 121: 12 Cr.L.J. 216; 10 I.C. 616; 18 A. 213: (1896) A.W.N. 32; 8 S.L.R. 21: 15 Cr.L.J. 662; see also 18 I.C. 667: 14 Cr.L.J. 107. The order of a District Magistrate, to prosecute *A* for giving false evidence, passed upon the complaint of a person, who merely informed that he came to know that *A* had made a false statement in a case before a Second Class Honorary Magistrate without asking for sanction to prosecute, it was held to be illegal, as it neither fell under S. 195 nor under S. 476, Cr.P.C.: 18 I.C. 667: 14 Cr. .J. 107.

22. Application made after great delay.—Where an application is made under this section, it should be made promptly or the delay should be satisfactorily explained. If there is great delay, a Court will be led to suspect the operation of indirect motives, possibly to worry, annoy and persecute the opponent, and not of a desire to vindicate justice. See for decisions on the point under the old section: 18 A. 203; 15 Cr.L.J. 698: 26 I.C. 146; 7 A.L.J. 50: 11 Cr.L.J. 140; 15 Cr.L.J. 577: 25 I.C. 329; 13 Cr.L.J. 209: 22 M.L.J. 419; 15 Cr.L.J. 698: 26 I.C. 146; 19 Cr.L.J. 508: 45 I.C. 268; 19 Cr.L.J. 642: 45 I.C. 834; 47 C. 741: 24 C.W.N. 743; 21 Cr.L.J. 235: 55 I.C. 107; 25 Cr.L.J. 119: 1924 L. 569. Ends of justice do not require that there should be a prosecution after a lapse of time in respect of what may be spoken of as a temporary lapse from probity not persisted in but rather apparently repented of: 25 C.W.N. 886: 23 Cr.L.J. 380. Where there is great delay in applying for sanction to prosecute for perjury, and where the Magistrate would have to determine the question by merely weighing the evidence on both sides, sanction ought not to be granted: 21 Cr.L.J. 145: 54 I.C. 673. Where the injured party fails to take action under this section, for about a year and half after the case been finally decided in his favour, and proceedings hereunder also have been dragged on for a long time, and two competent Courts have declared the case against the accused weak, the order under S. 476, *infra*, is liable to be set aside: 12 Cr.L.J. 434: 11 I.C. 618, referring to 6 P.R. 1909 (Cr.): 10 Cr.L.J. 158; but see

59 I.C. 855: 22 Cr.L.J. 151, holding that the mere fact that there has been delay in applying for sanction, or that the applicant is actuated by malice or vindictiveness, is no ground for refusing to grant sanction where there is a probability of securing a conviction. Ordinarily delay on the part of a private prosecutor in obtaining sanction in respect of offences against public justice is material as bearing on the question of *bona fides*, but where the Government is in fact the real prosecutor the question of *bona fides* does not arise: 2 P.L.J. 688: 19 Cr.L.J. 146; see also 2 P.L.J. 692: 19 Cr.L.J. 149. There was no fixed period of limitation for making an application for sanction under this old section. Art. 178 of the Limitation Act has no reference to applications arising out of proceedings under this Code: 10 A. 350. Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation can be made applicable to criminal cases: *Ibid.* Such rules would only tend to greater impunity to criminals: B.H.C.P.J. 1889, p. 123.

23. Particulars to be specified in application.—It was necessary that the application for sanction should mention the offences under the Penal Code, for which sanction was prayed: 1894 A.W.N. 87. The old section did not make any particular form of application necessary, nor did it require that the application should be made by any particular person: 18 M. 487 (489): 2 Weir 165 and 597. When order for prosecution is asked in respect of the use of a forged document, the document should be clearly ear-marked on the face of the application. It should not be left to the Court to find out by reference to another record what the document is: 18 A. 203. When an order is asked for in respect of false statements, the application must set out in detail the statements alleged to be false: U.B.R. (1913), 1st Qr., 166: 41 Cr.L.J. 422.

24. Application not to be dismissed for default of applicant.—Where an application for sanction (now for making complaint) is made to a Court, and at the time fixed for hearing the application the applicant is absent, the Code does not authorise the dismissal of the application, but the Court is bound to consider the application on its merits, even though the applicant is not present to help the Court: 26 B. 785: 4 Bom.L.R. 750; see also 4 P.R. 1915 (Cr.): 16 Cr.L.J. 288; following 32 B. 203; 22 I.C. 423: 15 Cr.L.J. 71; see also 17 Cr.L.J. 417: 35 I.C. 977; A.I.R. 1940 Lah. 526.

25. Preliminary enquiry before making complaint.—Under the provisions of S. 476, as amended, a civil Court has only authority to make a preliminary inquiry and record a finding in the case of an offence covered by present S. 195 (1), Cls. (*b*) and (*c*), but not Cl. (*a*). In the case of an offence covered by Cl. (*a*) the presiding officer of a civil Court is in the position of an ordinary public servant and exercises no quasi-judicial functions. Where therefore it is stated before a Munsif that certain persons had resisted a civil Court attachment and it is alleged that they had committed offences punishable under Ss. 183 and 186 of the Indian Penal Code, the Munsif has no jurisdiction to take action under the provisions of S. 476 of the Code of Criminal Procedure and he has no authority to make a preliminary inquiry, record a finding and take security for the appearance of the accused: 2 Luck. 646: 1927 O. 326; see also 19 L.W. 392: 1924 M. 615 (2) decided under the old section; see also 7 C.W.N. 423; 32 C. 367: 9 C.W.N. 364. S. 182, I.P.C., is not one of the offences mentioned in either Cl. (*b*) or Cl. (*c*) of S. 195 (1) and therefore, there is no reason why there should be preliminary enquiry before a complaint is actually made by the public servant. Again S. 476 speaks of holding a preliminary enquiry, if at all, by the Court, when it is making a complaint and not where it is the public servant who is making the complaint: 61 C.W.N. 967: A.I.R. 1957 Cal. 382: 1957 Cr.L.J. 716. The law does not require that proceedings with a view to the making of a complaint under S. 195 (1) (*a*), should be in the form of a public judicial enquiry. Some enquiry before making a complaint is of course desirable, but that enquiry ought to be of a purely administrative character and need not be made in public; nor need the statement of witnesses be recorded on oath (Per Patterson, J.): 42 C.W.N. 531. Where a subordinate Judge, on the report of his bailiff that he [was obstructed by *A* and *B* in execution, gave sanction for their prosecution under S. 186, I.P.C., without making a preliminary inquiry into the truth of the report, and sent the case to a first class Magistrate for trial, held, the Subordinate Judge should have made an inquiry of his own, without acting on the mere report of the bailiff: Rat. 701. As regards preliminary enquiry in the case of offences covered by S. 195 (1) (*b*) and (*c*), See Notes 22 to 37 under Heading VI under S. 476, *infra*.

26. Effect of complaint.—Decisions regarding effect of sanction under old section. The fact that a Court sanctions a prosecution (and under the present law makes a complaint) is no intimation to the Magistrate that the Court thinks that there is a case to go to a jury or that he thereby is in any way relieved from his duty of considering whether the accused ought to be committed for trial or not. This view is not inconsistent with the duty of the Court to refuse sanction, if it is clearly of opinion, on the evidence before it, that no reasonable jury should convict: 45 M. 928: 44 M.L.J. 774 (F.B.). A Magistrate, inquiring into a charge instituted after granting of sanction, is not relieved of any resposibility imposed by the Code, by reason of that sanction, in conducting the inquiry: L.B.R. (1893-1900) 83.

27. Order as to costs in proceedings under the section.—An order awarding costs in proceedings under S. 195 is illegal and must be set aside: 5 P.R. 1915 (Cr.): 16 Cr.L.J. 281; 14 Cr.L.J. 422: 20 I.C. 406. A proceeding under this section ought not to be treated as a proceeding between private parties. The person, who applies for prosecution presumably does so in the interests of the administration of public justice, and if that be his real point of view, he cannot very well claim costs from the party against whom he obtains the order. Besides, the complaint does not establish the guilt of the person against whom the order is made; if ultimately it transpires that the person is innocent, the order for payment of costs by him to the party, who moved the Court cannot very well be justified: 13 I.C. 99 (100): 13 Cr.L.J. 6; 1923 R. 12; 25 C.W.N. 661. Proceedings of a civil Court under S. 195, Cr.P.C., should be treated as of a criminal nature, and no costs should be awarded in such proceedings: 17 Cr.L.J. 184: 33 I. C. 824. See also Note 33 under Heading VI under S. 476, *infra*.

28. Application for making complaint can sustain action for malicious prosecution.—Where an application was made to a Munsiff for sanction under the old section and the application was rejected and thereupon plaintiff sued defendant for malicious prosecution it was held that the defendant was liable, as proceedings for sanction to prosecute before a Munsif, even if regarded as civil proceedings, can sustain an action for malicious prosecution: 33 C.W.N. 79: 1928 C. 691; see also 17 C. W. N. 554; 27 C.W.N. 387: 49 C. 1035.

29. Complaining authority cannot try case.—Formerly, it was held that a Court, which sanctioned or directed a prosecution, wasthereby rendered incompetent to try the offence or hear an appeal against a conviction for it—See 76 I.C. 395: 25 Cr. L. J. 171; 16 C. 766 (F. B.); U. B. R. (1897-1901) 61 (Cr.); 27 C. 452: 4 O. W. N. 594; 1895 A. W. N. 225. Now that the Court has got to make a complaint in writing it cannot try the case itself—See (1939) 1 M. L. J. 573: 1939 Mad. 496.

II. SUB-SECTION (1) (a)—CONTEMPT OF LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Synopsis.

1. "Public servant concerned".
2. "Some other public servant to whom he is subordinate".
3. Subordination of public servants.
4. Examination of complainant.

---

1. "Public servant concerned".—The proper procedure to be followed under S. 195 (1) (*a*), is for the public servant himself or for some other public servant to whom he is subordinate to make the complaint and not to direct a third person to do so: 1953 Cr.L.J. 1421:A.I.R. 1953 Tra.-Co. 350. As the right to prosecute in cases covered by S. 195 (1) (*a*) is invested only in the public servant and cannot be delegated, no one can represent the public servant or act on his behalf or be his substitute as a complainant. The restrictions imposed by the section are not a mere technicality but have a definite purpose behind them. A disregard of the provisions of the section vitiates the whole proceedings and cannot be cured by the provisions of S. 537 of the Code: 1959 All. L.J. 620: 1959 Cr. R. 388; 57 Bom. 151. A District Magistrate cannot, therefore, authorise the Public Prosecutor to file a complaint on his behalf: 16 Cr.L.J. 251: 28 I. C. 107, following 15 Cr.L.J. 581; 1964 M.P.L.J. 383: A.I.R. 1964 Madh. Pra. 237: 1964 (2) Cr.L.J. 420 (complaint by Personal Assistant to Dt. Magistrate incompetent).

A private prosecution for an offence under S. 181, I.P.C., is barred by S. 195, Cl. (1) (*a*), hich provides that a Court can take cognizance of such an offence only on a written complaint the public servant concerned: 4 R. 437: 1927 R. 61. Where a person reports to a Tehsildar take action on averment of certain facts, believing that the Tehsildar would take some action on it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution to be launched, that the complaint in writing should be made by the Tehsildar as the public rvant concerned under S. 182, and not leave it to the police to put a charge-sheet. The mplaint must be in writing by the public servant concerned. The trial under S. 182 without e Teshildar's complaint in writing is therefore without jurisdiction *ab initio*: 1962 (2) Cr.L.J. 36: A.I.R. 1962 S.C. 1206, followed in 1963 B.L.J.R. 471 (Merely forwarding petition of omplaint by Sub-Inspector concerned in due course, without applying his mind to contents hereof does not amount to compliance with S. 195 (1) (*a*)). The police reported an information be false and the Inspector of Police, purporting to act under this section granted sanction for he prosecution of the informant under S. 182, I.P.C. The Magistrate took cognizance of the ffence. Semble.—That, without the complaint of the public servant to whom the alleged false nformation was given, the Magistrate was not right in taking cognizance of the offence: 4 C.W.N. 765: 11 Cr.L.J. 354, following 14 C. 707. Where on a complaint made to an officer-n-charge of a police-station the usual investigation followed and a report embodying the result f the investigation was submitted to the Magistrate an order of the Magistrate directing the rosecution of the complainant under S. 182, I.P. Code, is without jurisdiction: 52 Cr. L. J. 394: A.I.R. 1951 Assam 54. The words "public servant concerned", so far as an offence under . 182, I.P. Code, is concerned, would mean a public servant to whom a false information is given with the intention or knowledge that such public servant will do something which he ought ot to do: 51 Cr.L.J. 469: A.I.R. 1950 Cal. 97; 1960 A.L.J. 884: A.I.R. 1961 All. 352 (It is he who can file a complaint and not a public servant against whom such false information is given). Where it is proposed to prosecute a person in respect of the false information contained in a elegram sent by him to a Sub-Divisional Officer, it is necessary under S. 195 (1) (*a*), that he proceedings should be initiated on the complaint of such officer or some officer to whom he s subordinate: 190 I.C. 768. As to who can prosecute for offence under S. 182, Penal Code: 5 A. 36 (39); 8 A. 382; 13 C. 270. Where a party to a suit in a Village Panchayat Court files a petition for transfer of that case before the District Munsif and in that petition makes certain allegations against the President of the Village Panchayat Court the President of the Village Panchayat Court cannot file a complaint against that party under S. 182, I.P. Code, on account of those allegations. The information is not given to the complainant or public servant sub-ordinate to him and an offence under S. 182, I.P. Code, cannot be taken cognizance of except on complaint in writing of the public servant concerned or some other public servant to whom he is subordinate. A complaint of the District Munsif would be necessary for a prosecution for an offence under S. 193, I.P. Code, because he is the proper person to whom the allegations are made: 1941 M.W.N. 523: A.I.R. 1941 Mad. 764. Where a complaint against a public servant, made to a Deputy Commissioner is referred for enquiry and report to a subordinate officer, the latter cannot sanction the prosecution of the complainant under S. 182, I.P.C.: 4 C.W.N. 366. See also A.I.R. 1952 Raj. 142 (False information to D.I.G. of Police—Investigation by sub-ordinate—Complaint by latter not valid). Where a District Magistrate sends a petition filed before him to a Sub-Divtsional Magistrate for enquiry, the Sub-Divisional Magistrate cannot take cognizance of a case under S. 182, I.P. Code, against the petitioner, except on the complaint in writing of the District Magistrate before whom the petition was filed or some other public servant to whom he is subordinate: 67 C.L.J. 583. Where false information regarding a demand of bribery made by a public servant supplied to the Chief Minister is sent for inquiry and that information is again repeated in the inquiry made by a Sub-Divisional Magistrate, the repeated information can be basis on which the Sub-Divisional Magistrate can file a complaint against the informant for an offence under S. 182, Penal Code; the said Magistrate will under S. 195, Cr. P. Code, be the public servant concerned: 1959 All. L. J. 44: 1959 Cr. L. J. 683: A.I.R. 1959 All. 378: I.L.R. (1959) 2 All. 127. The essence of an offence under S. 182, is not the falseness of the information, as it is the essence of an offence under S. 211 but the contempt of the lawful authority of the public servant and unless and until the public servant concerned chooses to move the matter, Court has no authority to do so *suo motu*, by whatever process it reaches the result: 26 Cr. L. J. 962: 1925 M. 400; see also 1928 P. 102; 10 S. L.R. 65: 35 I.C.

481; 15 Cr. L. J. 603: 25 I. C. 515; 1915 M. W. N. 272: 16 Cr. L. J. 423; A. I. R. 1947 Pat. 64; 48 Cr.L.J. 264.

Where false allegations are made before a public servant, then it is Clause (*a*) of S. 195 (1) which is operative. If as a result of this false information a case is instituted in Court or the accused himself takes the case to Court on the basis of that false accusation, it comes within the orbit of Cl. (*b*) to S. 195 (1). In the first case it is the public servant concerned or some other officer to whom he is subordinate who can initiate proceedings and in the other case it is the Court concerned or the Court to which that Court is subordinate who can take action: 1961 All. L.J. 278: 1962 (1) Cri.L.J. 627. The petitioner filed a complaint before the Magistrate who after examining the petitioner sent the complaint to the Sub-Inspector for inquiry and report. The Sub-Inspector reported the case to be maliciously false, recommended the prosecution of the petitioner under S. 211, I.P.C., and preferred a complaint of the offence against the petitioner. The petitioner filed a petition impugning the report and praying the Magistrate to hold a judicial inquiry. The Magistrate directed the Sub-Inspector to submit a report for prosecution under S.182, I.P.C., and on report of the same issued a summons: Held, that the order was wrong in law, that S. 195 (1) (*a*), Cr.P.C., bars a complaint by the Sub-Inspector of an offence under S. 182, since he was not "the public servant concerned" or the superior of such public servant to whom the false information was given, and that S. 195 (1) (*b*) was a bar to cognizance being taken of it except on the complaint of the Magistrate: 10 P. L. T. 77: 1929 P. 92. If a person not merely gives false information to the Police but also files a complaint making a false charge before a Magistrate after the police refuse to take any action, the case comes within the purview of S. 211, I.P. Code, and not merely that of S. 182, I.P. Code. When there is a specific section dealing with a false charge, that section must be considered to be the one applicable to the circumstances of the case. A complaint under S. 182, I.P. Code, instituted by the Inspector of Police cannot be taken cognizance of, as under S. 195 (1) (*b*), no Court can take cognizance of an offence falling under S. 211, I.P. Code; except on a complaint by the Court concerned: 43 P.L.R. 191: A.I.R. 1941 Lah. 216.

Where the pubic servant (in this case Municipal Tax Collector) to whom resistance was offered in the taking of the property files the complaint under S. 183, I.P.C., S. 195 (1) (*a*) is completely satisfied and it does not repuire any further sanction from the Vice-Chairman or any other officer of the Municipality: 1961 (2) Cr.L.J. 564 (566) (Tripura).

S. 195 (1) (*a*) does not authorise a superior authority to lodge a complaint under S. 186, I.P. Code, when the aggrieved person is not a public servant: 44 C.W.N. 1011. Where a peon to whom a warrant of attachment of movable property of a judgment-debtor issued and signed by a Subordinate Judge was entrusted for execution, was assaulted by the judgment-debtor while the warrant was executed, Held that both the Subordinate Judge and the peon were public servants within the meaning of S. 21, I.P. Code and the peon was subordinate to the Judge while he was carrying out his order and that it was the duty of the Judge to make a complaint under S. 186, I.P. Code, against the judgment-debtor: I.L.R. (1942) 2 Cal. 108: 1942 C. 434. A Sub-Divisional Magistrate making an order under S. 144, Cr.P. Code, does so as a public servant and not as a Court. Where an order made by a Sub-Divisional Magistrate under S. 144, is disobeyed or contravened, the only persons on whose complaint a prosecution can be launched under S. 188, I.P. Code, for disobedience of the order are the Sub-Divisional Magistrate who makes the order and the public servant to whom he is subordinate, namely, the District Magistrate. In the absence of a complaint by the Sub-Divisional Magistrate or by the District Magistrate concerned no prosecution can be started and no Court has jurisdiction to try the accused, for the disobedience of the order made under S.144, Cr.P. Code. The terms of S.195 (1) (*a*) are absolute and admit of no exception: 9 Cut. L.T. 95. See also (1939) 1 M.L.J. 573: 1939 M. 496 (Magistrate whose order has been disobeyed, cannot try case); A.I.R. 1953 Cal. 507 (Magistrate cannot make complaint unless he first decides whether there has been disobedience of his order); 1956 Cr.L.J. 524: A.I.R. 1956 Cal. 118; 1964 B.L.J.R. 506 (Magistrate subordinate to Sub-Divisional Magistrate cannot file a complaint and Sub-Divisional Magistrate has no jurisdiction to take cognizance on such complaint).

Where an *ex parte* order of injunction prohibiting entry on land in dispute under S. 144 of the Code is made by *A*, a First Class Magistrate, while functioning as the Sub-Divsional Magistrate and if his order is alleged to have been violated or disobeyed, the complaint which he makes under S. 195 (1) (*a*) in respect of an offence punishable under S. 188, Penal Code, is a valid complaint, although on the date he makes the complaint he is not functioning as the Sub-Divisional Magistrate: 60 Cal. W.N. 633: A.I.R. 1956 Cal. 102: 1956 Cr.L J. 515.

Where a person is assaulted when trying, under the orders of an Amin, to open the door of a judgment-debtor's house, the sanction of the Amin would be sufficient to entertain a complaint against the person who assaulted, for offences under Ss. 183 and 186, I.P.C.: 31 M. 43: 17 M.L.J. 559. See also 1939 M.W.N. 886. But in 2 B. 653; it was held that when the offence charged against a person was "contempt of the lawful authority of a public servant", proceedings could be instituted only with the sanction of the Court whose authority had been resisted. In such a case the complainant was the Court whose authority was resisted and not the person injured through the resistance. In the Central Provinces, a complaint of an offence under S. 186;, I.P.C., in respect of a process-server can be made by Nazir or District Judge, or the Judicial Commissioner but not a Sub-Judge nor an Additional Judicial Commissioner: 27 Cr.L.J. 1010: 1926 N. 485. The accused were prosecuted at the instance of an Additional Judge of Small Cause Court for obstructing a bailiff while excecuting a warrant of attachment. It appeared that the warrant had been issued by a Judge of the Small Cause Court and that he had sent the proceedings to the Additional Judge after ordering notice: Held, that the Additional Judge had the power to file the complaint: 1931 L. 530: 32 Cr.L.J. 964.

A public servant is not barred from making a complaint under S. 195 (1) (*a*), Cr. P. C., merely because his subordinate has refused to do so. A District Judge is, therefore, entitled to make a complaint in respect of an obstruction offered to a civil Court peon, although the Subordinate Judge has refused to do so. A civil Court peon, although his immediate superior may be the Subordinate Judge is none the less a subordinate of the District Judge: 42 C.W.N. 531.

One Income-tax Officer made the assessment, but the complaint against the assessee was made by his successor-in-office: Held, that the "public servant" concerned in S. 195 (1) was the Income-tax Officer whose duty it was to make assessment for income-tax in the particular section or area in which the assessment of the assessee was made and that the succeeding officer was competent to make complaint: 146 I.C. 653: 1933 R. 292. If allegations are made to a District Judge which constitute an offence under S. 182, I.P.C., not only the District Judge to whom the information is given but also his successor-in-office-can make a complaint under S. 195 (1) (*a*). The complaint prescribed in S. 195 (1) (*a*) is a simple duty and responsibility and not a personal privilege; and there is nothing aginst a successor-in-office of the public servant to whom information was given making a complaint under S. 182, I.P.C.: 16 P. 571: 1938 P. 83. See also I.L.R. (1939) Kar. 656:1939 S. 164 (complaint filed by successor-in-office of Sub-Inspector to whom false information was given is valid): 1939 O.W.N. 337: 1939 Oudh 160.

When the public servant concerned has withdrawn the proceedings orignally instituted by him for making a complaint under S. 186, I.P.C., it is definitely undesirable that they should be revived by a person who is not a public servant: 44 C.W.N. 1011.

2. "Some other public servant to whom he is subordinats".—See also Notes under Heading VIII below. In a case where the public servant concerned is not available by reason of transfer or resignation or death, then a complaint might be made by some other public servant to whom he is subordinate: 60 Cal.W.N. 633: A.I.R. 1956 Cal. 102: 1956 Cr.L.J. 515.

The subordination of one public servant to another may arise from express enactment or from the fact that both the public servants belong to the same department, one being superior in rank to another: 18 M.L.J. 584: 4 M.L.T. 214. The District Magistrate under R. 6 of the Police Regulation is the head of the criminal administration of the District, and as such is an officer to whom the police-officers including the Superintendent of Police are subordinate. Even in respect of false information relating to police-officers, when given to the District Magistrate, he is quite competent to file a complaint under S. 195, Criminal P. C., for an offence under S. 182, Pena Code, both in his capaciiy as a public servant to whom a false information is given as well as in

his capacity as the head of the criminal administration of the disirict and to whom the police officers of the district are subordinate: 1960 All. L.J. 884: A.I.R. 1961 All. 352: 1961 (2) Cr.L.J. 47.

The complaint contemplated by sub-S. (1) (*a*) must be filed by the officer concerned or by some officer to whom such officer is subordinate and if filed by some officer who is himself subordinate to such officer concerned the Court has no jurisdiction to take cognizance of it: I.L.R. (1940) Lah. 396: 1940 Lah. 15; 1963 B.L.J.R. 471 (Letter containing false allegations addressed to Sub-Inspector of Police—Complaint under S. 182, I.P.C., submitted by Assistant Sub-Inspector is directly in conflict with S. 195 (1) (*a*)).

Where a public servant is obstructed in the exercise of his duties he himself or any person to whom he is subordinate can complain. Where the charge is that the accused carried away the property which an Amin had attached and in other ways obstructed him in executing a decree of the District Munsif's Court, and the Nazarat at the place to which the Amin is attached is under the charge and direction of the Nazir, subject to the supervision and control of the Subordinate Judge of that place, the Amin cannot be considered to be a subordinate of the District Munsif so as to entitle the latter to file a complaint under Ss. 183 and 186, I.P. Code, in respect of the obstruction to the Amin and the carrying away of the property attached by him. The complaint can be filed by the Amin himself, or by the Nazir or the Subordinate Judge or any of the superiors of the Subordinate Judge, but not by the District Munsif: (1942) 2 M.L.J. 615: 1943 M. 170.

Under S. 195 (1) (*a*) if the public servant is making the order is a Court in respect of that order the Court to which that Court would be subordinate is the Court to which appeals would ordinarily lie: 47 B. 102: 24 Bom. L.R. 810, following 42 M. 64. But the Patna and Allahabad High Courts and the Oudh Chief Court are of the view that even if a public servant is a Court he is subordinate to the appellate Court as defined in S. 195 (3) only when the offences are those mentioned in S. 195 (1) (*b*) and (*c*) but not in respect of offences mentioned in Cl. (*a*): 6 P. 39; 1927 P. 111; 1927 A. 828: 28 Cr.L.J. 547; 1951 A.L.J. 710: A.I.R. 1951 A. 828 (In case of an offence under S. 188, I.P.C., for disobedience of order of Sub-Divisional Magistrate, subordimation of such public servant is to be ascertained only with reference to S. 17, Cr.P.C., and not with reference to S. 195 (3); 2 Luck. 395: 1927 O. 51. It has been therefore held that a Magistrate of the first class making a complaint under S. 195 (1) (*a*) is subordinate to the District Magistrate and not to the Sessions Judge for the purpose of sub-S. (5): 6 Pat. 39; 1941 O.W.N. 1130: 1942 Oudh 50. The Calcutta High Court also has taken the same view—See 61 C.W.N. 658. Section 195 (1) (*a*) does not deal with a complaint by a Court. What it deals with is a complaint by a public servant, and the subordination of public servants is not determined by the provisions of sub-S. (3) of S. 195 which deals with the question of subordination of Courts. Therefore, when a Magistrate appointed under Ss. 12, 13 and 14 and before whom the application was made for filing a complaint against members of the opposite party under S. 188 of the Indian Penal Code refused to file such a complaint, it is only District Magistrate to whom the Magistrate is subordinate by virtue of S. 17 (1) who is competent to file the complaint under that section. Cognizance of the offence cannot be taken by the Court on the complaint of the Sessions Judge. *Ibid.*

3. Subordination of public servants.—See also Heading VII below—*Constable subordinate to Superintendent of Police.*—Where a person was charged under S. 182, I.P.C., with having given false information to a Police Head Constable, a sanction given by the District Superintendent of Police to whom the constable was subordinate was held valid: 19 W.R. 33 (Cr.).

Village Magistrate, whether subordinate to Sub-Magistrate.—Where false information was given to a Village Magistrate, a sanction to prosecute the informant under S. 182, I.P.C., given by a Second Class Magistrate was held sufficient: 4 M. 241: 1 Weir 117; 2 Weir 456. But in 18 M.L.J. 584: 4 M.L.T. 214, it has been held that Village Munsiffs are not subordinate to Sub-Magistrate within the meaning of this section. The ruling in 4 M. 241, was distinguished as *obiter dictum* see also 47 M. 229: 1924 M. 387 (2) holding that the Village Magistrate is not subordinate to a Sub-Magistrate.

Station-House Officer not subordinate to Taluq Magistrate.—A Taluq Magistrate is not the superior of the Station-House Officer, and cannot sanction the prosecution of a person for making a false statement to the police: 6 M. 146: 2 Weir 156.

Police Sergeant not subordinate to Township Magistrate.—A Police Sergeant is not subordinate to a Township Magistrate within the meaning of this section: 1 L.B.R. 101; see also 27 C. 452: 4 C.W.N. 594.

Police-officer not subordinate to Bench of Honorary Magistrates.—A sanction given by a Bench of Honorary Magistrates to prosecute a person for making a false report to a police-officer is not legal, the police-officer not being subordinate to the Bench: 1895 A.W.N. 152.

Subordination of District Police to District Magistrate.—Where a District Magistrate sanctioned the prosecution of a person for making a false charge to the police, on the result of an enquiry held by another Magistrate, held, the order must be deemed to have been passed by the District Magistrate as the head of the police, and not in his capacity as Magistrate: 1890 A.W.N. 167. The Magistrate of the District in whom are vested under S. 4, Act V of 1861, powers of general control and direction over the police in his district may sanction prosecution under S. 195 (1) (*a*) for the offence of preferring a false complaint to the police: 6 P.R. 1910 (Cr.): 5 I.C. 829; see also 117 I.C. 37, cited under Heading VIII below. But in 4 L. 130: 1923 L. 341 it has been held that although police-officers in district are generally subordinate to the District Magistrate the subordination contemplated by S. 195 of the Cr.P.C., is not such subordination and that such subordination contemplated some superior officer of police.

Police-officer or Sub-Magistrate no subordinate of Sessions Judge.—As regards prosecution under S. 182, I.P.C., neither the police-officer nor the Sub-Magistrate to whom the reports were sent is a Subordinate of the Sessions Judge: 27 M.L.J. 586: 15 Cr.L.J. 612.

Superintendent of Police.—Superintendent of Police, if subordinate to District Judge: see 1923 A. 149: 45 A. 135.

Commissioner subordinate to the Court appointing him.—The Commissioner is subordinate to the Court appointing him and the offence to refuse to take the oath and answer the question put by the Commissioner is an offence against the Court itself: 29 Bom.L.R. 1476: 1927 B, 647.

4. Examination of complainant.—The public servant complaining under the section need not be examined: see Cl. (*aa*) of S. 200 newly added: see also 8 S.L.R. 41: 15 Cr. L. J. 649.

III. SUB-SECTION (1) (b).—OFFENCES AGAINST PUBLIC JUSTICE.

Synopsis.

1. Sub-section (1) (*b*) cannot apply where presiding officer of Court is alleged to have committed the offence.
2. Clauses (*b*) and (*c*) compared and contrasted.
3. Cognizance properly taken if affected by subsequent events.
4. " Any proceeding " if confined to judicial proceeding.
5. " In relation to any proceeding "—Construction.
6. Offence committed in trial Court, if committed also in relation to appeal.
7. Court's power to complain not restricted to parties to proceedings—See Note 4 under Heading III under S. 476, *infra*.
8. Complaint against witness under S. 193, I.P.C.
9. Complaint for perjury, what to contain.
10. Court by which complaint of perjury should be made.
11. S. 196, I.P.C.—Using false evidence.
12. S. 206, I.P.C.—Fraudulent removal of property.
13. S. 209, I.P.C.—False claim made in suit.
14. S. 210, I.P.C.—Omission to give credit in execution for money paid.
15. S. 211, I.P.C.—Making false charge—Offence, when committed in relation to a proceeding in Court.
16. Judicial determination of complaint necessary before prosecution under S. 211, I.P.C.

17. Discretion in prosecuting for false charge.
18. Notice before prosecution for false charge.
19. Offence under S. 228, I.P.C.
20. Court by which complaint may be made under Clause (*b*).
21. Omission to mention section of offence in complaint by Court, effect of.

---

1. Sub-section (1) (b) cannot apply where presiding officer of Court is alleged to have committed the offence.—S. 195 (1) (*b*) cannot apply when the presiding officer of a Court itself is alleged to have committed the offences, for the simple reason that it would be absurd to require that he cannot be prosecuted except on a complaint made by himself. Then provision empowering a superior Court to make a complaint is applicable in those cases only in which the inferior Court has the power, and can be expected, to make a complaint: 1959 All.L.J. 354: 1959 Cr.L.J. 937: A.I.R. 1959 All. 512.

2. Clauses (b) and (c) compared and contrasted.—Cls. (*b*) and (*c*) agree in some respects, but differ in this that the offence is identified in Cl. (*b*) by reference to the fact, that it has a direct connection with some proceedings in Court, *viz.*, having been (i) committed in, or (ii) in relation to the proceeding; whereas in Cl. (*c*) the offence has to be connected, not with the proceeding, but (*i*) with a document produced or given in evidence in the proceeding; and (*ii*) by the fact that the document has been produced or given in evidence by a party to the proceeding. In the one case; it suffices if the offence has reference to the proceeding; in the other, it must have reference to a party to the proceeding and to a document produced or given in evidence by the party. (Per Tyabji, J.): 39 M. 677 (681): 18 M.L.T. 322 (325).

3. Cognizance properly taken if affected by subsequent events.—When a Magistrate has once properly taken cognizance of an offence, anything that may happen subsequently cannot bring into operation S. 195 (1) (*b*) or (1) (*c*) so as to deprive him of jurisdiction to dispose of the matter in accordance with law: 1930 P. 505: 31 Cr.L.J. 1200; see also 11 P. 155; 39 M. 677; 56 C. 1041 (1047); I.L.R. (1944) Nag. 238: 1943 N. 327; A.I.R. 1937 Lah. 238: 38 Cr.L.J. 581 (2). A complaint was made to the police by the accused but the same was found to be false by the police who thereupon filed a complaint against the accused for the offence of false charge. The accused was committed to the Sessions by the Magistrate. Subsequently the accused repeated his first complaint to the Magistrate. The Magistrate committed this case also to the Sessions. This case which was brought by the accused was taken up first and ended in acquittal. Then the case against the accused was taken up. Held, that the sanction of the Magistrate under S.195 (1) (*b*) was not necessary because the committal order was perfectly valid when it was made, there being no complaint to the Magistrate at that time: 29 Bom.L.R. 1590: 1928 Bom. 22; see also 117 I.C. 37.

4. "Any Proceeding", if confined to judical proceeding.—S. 195 (1) (*b*), Cr. P. Code, refers to "any proceeding" and is not confied to judicial proceeding. It is, therefore, not necessary for its application that the Court should be engaged in a judicial proceeding: 57 A. 778: 1935 All. 341. The recording of a statement under S. 164, Cr.P. Code, before a Magistrate is a "proceeding" in a "Court" within the meaning of S. 195 (1) (*b*), and therefore, no Court can take cognizance of an offence punishable under S. 193, I.P.C., when it is alleged to have been committed in a proceeding under S. 164, in a Court of a Magistrate without a complaint in writing of such Court or some other Court to which it is subordinate: 57 A. 778: 1935 A. 341. The word "proceeding" in S. 195 (1) (*b*) is used in a wider sense than "judicial proceeding", that comes into existence after cognizance of an offence has been taken by a Magistrate is not the only proceeding contemplated by S. 195 (1) (*b*) and a proceeding held by a Magistrate on receipt of an investigating officer's report made under S. 167 (1) is a proceeding within the meaning of S. 195 (1) (*b*). It comes into existence when the Magistrate passes a remand order or passes orders on an application for bail: 1963 A.L.J. 334: 1963 (2) Cr.L.J. 64.

A *mukhtiarkar* holding an enquiry in mutation proceedings is a Revenue Court though his proceedings are not judicial proceedings. Hence where offences under Ss. 193 and 467, I.P.C., are committed during mutation proceedings, the complaint by the *mukhtiarkar* is necesssary under

S. 195 (1) (*b*) and (*c*) before criminal proceedings could be taken for those offences: I.L.R. (1940) Kar. 435: A.I.R. 1940 Sind 100.

Although the proceeding need not be a judicial one, it should be a proceeding in a Court, (*i.e.*) the Court should act in its judicial and not in its executive or administrative capacity. The section does not apply to any offence committed in or in relation to, a proceeding before it in its executive or administrative capacity—See A.I.R. 1938 Sind 213. A Magistrate holding an executive or departmental enquiry cannot make a complaint under S. 476—See Heading II under S. 476.

5. **"In relation to any proceeding", Construction.**—See also Note 11 under Heading III under S. 476. Cl. (*b*) of sub-S. (1), S. 195, Cr.P.C., describes certain offences, but it lays down that only when those offences are committed in certain circumstances, *i.e.*, in, or in relation to, any proceeding in any Court; then the cognizance of those offences shall be barred by Cl. (*b*). An offence under S. 193, for example, may be committed in Court and out of Court. It is only when an offence under S. 193, Penal Code, is alleged to have been committed in or in relation to any proceeding in any Court that a complaint by the Court would be necessary before cognizance is taken of that offence. Similarly, in all other cases enumerated in Cl. (*b*) the bar arises only when the offences are committed in or in relation to any proceeding in any Court: 53 All. 804 (810): 1931 A. 443 (S.B.); 26 C. 786 (offence of fabrication of false evidence was committed by police-officer in course of investigation but no judicial proceeding followed—complaint not required); A.I.R. 1917 Lah. 267 (2) (offence committed during police enquiry and before proceedings had been taken in Court—Sanction not required); 1958 A.L.J. 595: A.I.R. 1959 All. 14: 1959 Cr.L.J. 2 (offences under Ss. 193 and 196, I.P.C., committed while case was still in investigation stage—No complaint necessary). But see A.I.R. 1936 Lah. 238 (False statement in police investigation with intention that there should be trial in criminal Court, is made "in relation to proceeding in Court"—complaint is therefore necessary). Where the accused had committed certain offences prior to the filing of a civil suit by him against the complainant but the offences were not committed in connection with any proceeding in any Court. Held, that no complaint by the civil Court was necessary under S. 195 (*b*) and (*c*): (1954) 2 M.L.J. 332: A.I.R. 1954 Mad. 822.

S. 195 (1) (*b*) requires the complaint of the Court not only in respect of certain offences committed in the proceedings in the Court but in relation to any proceedings in the Court: 1938 All. 318. The expression "in relation to any proceedings" is very general and is wide enough to cover a proceeding in contemplation before a criminal Court though the proceedings may not have commenced when the offence was committed: 23 S.L.R. 285 : 1929 Sind 132; following 1923 B. 105; see also 52 C.L.J. 149 (an offence may be committed by a person in relation to a judicial proceeding, though it may not be in a judicial proceeding). The tendency seems to be to give the words of S. 195(*b*) as wide an application as possible. It is clear that some of the offences enumerated in the clause are capable of being committed in relation to a judicial proceeding which did not exist. False evidence, for instance, may be fabricated for a contemplated suit or property may be fraudulently concealed in contemplation of an execution proceeding. The clause applies if the judicial proceeding is in existence at the time when it is sought to prosecute the offender for the offence in question: 5 P.33 (36, 37) : 1925 P. 717. If two offences are even remotely connected by the relationship of cause and effect, the first may be said to have been committed "in relation" to the second within the meaning of S. 195. It may be that the commission of the latter offence may even have been intended, but if it is in fact the consequence of the former offence, then S. 195 applies: 5 P. 33 (37). Section 195 (1) (*b*) does not require that the proceeding must be one from which it can be found out whether an offence was committed or not or that it must be such as to give material to the Court for deciding whether to make a complaint or not. So also, it is not essential that the proceeding must be one for inquiry into the very act which is alleged to be an offence. S. 195 (1) (*b*) simply requires that there should be some relationship between the offence alleged to have been committed and the proceeding; no particular kind of relationship is required. The words "in relation to" do not mean that the offence must have been committed after the proeeeding had started. Even if it was committed prior to the proceeding it can be said to be in relation to the proceeding if the proceeding was taken in consequence of it: 1963 A. L. J. 334: 1963 (3) Cr. L. J. 64. An offence under S. 206, I.P.C., may be said to be committed "in relation to a proceeding in a Court", although it is committed, not in relation to a pending, proceeding but in relation to a future proceeding: 5 O.C. 46. The words are

wide enough to include evidence, which was adduced before a Court and which was heard by the Court: 14 Bom. L.R. 715 : 13 Cr.L.J. 751.

Before the Registrar of the Presidency Court of Small Causes at Calcutta, whose duty is to enquire into the proper service of summons and to take evidence in this behalf, it transpired that the petitioner in this case by false representation had returned the summons as properly served, and the Public Prosecutor at the instance of the Chief Judge made an application for sanction to prosecute the petitioner under S. 205, Penal Code, which was granted by the said Registrar under this section, and upon a rule being obtained to question the propriety of the sanction, Held, that the proceedings before the Registrar were judicial proceedings and he was a judicial officer, that the sanction given by him to prosecute was properly given, and the fact that it was not stated in the depositions recorded by the Registrar that they were taken on solemn oath or affirmation was a matter covered by S. 13, Oaths Act: 18 C.W.N. 1323.

Sanction (complaint) under S. 195 (1) (*b*) is not necessary in the absence of any proceeding pending or disposed of in which or in relation to which the offence under S. 193, I.P.C., is said to have been committed: 45 B. 668. The date when the Court takes cognizance of an offence under S. 193 of the Penal Code is the crucial date for seeing whether S. 195, Cr.P.C., applies. The proceedings may then be pending in a Court in relation to which the offence is alleged to have been committed. Or the suit or proceedings might have been disposed of before the prosecution was launched. Or again a suit might have been started in connection with which evidence was fabricated and an offence committed under S. 193 of the Penal Code, but the suit might have been subsequently withdrawn before any prosecution is started. In all these three cases a complaint by the appropriate Court is necessary. But where an offence is committed under S. 193, Penal Code, in respect of proceedings in a Court of law which are contemplated but which in fact are never started, in such a case S. 195 does not apply and the Magistrate can take cognizance of it without any complaint from a Court: 56 Bom. 213 : 1932 Bom. 185. If the fabrication of false evidence is in relation to a claim made in a suit actually filed in Court, though the suit is instituted only later, a complaint by the Court is necessary in regard to a charge under S. 193, I.P.C.: 41 Bom. L.R. 98 : 1939 B. 129. See also 39 M. 677 : 1937 M.W.N. 870.

When a person makes one statement in the committing Court and contradicts it in the Sessions Court, the Sessions Judge can complain in the alternative that one or the other of the statements must be false. A false statement at the committal stage which eventuates in a trial is "in relation to" the trial: 55 M. 178 : 1931 M. 778 : 61 M.L.J. 914, following 100 I.C. 708. See also 5 L.W. 218 : 37 I.C. 495, following 2 Weir 160. Where seven persons were directed by the Sessions Judge to be prosecuted for having made contradictory statements before himself and before the committing Magistrate and the latter also directed their prosecution as a measure of precaution and in appeal it was contended that a prosecution was impossible as the statements had been made in different Courts. Held, that the case was covered by S. 476. The perjury was committed either in the Sessions Court or at the preliminary enquiry which preceded and led up to the trial in the Sessions Court and the Sessions Judge had jurisdiction to direct the prosecution; it was not either advisable or necessary for the committing Magistate to direct their prosecution also: 55 M. 536 : 62 M.L.J. 717.

The recording of a statement under S. 164, Cr.P.C., before a Magistrate is a "proceeding" in a "Court" within the meaning of S. 195 (1) (*b*): 57 A. 778 : 1935 A. 341. Statements recorded under S. 164 during the course of an investigation into an offence of murder which is triable only by a Sessions Court, must be held to be "in relation to" the trial in that Court: 34 Cr.L.J. 92 : 1933 M. 125; see also 1933 M.W.N. 896; 65 M.L.J. 534. The Special Tribunal has jurisdiction under S. 476 to hold an inquiry, record a finding and make a complaint both as regards the statement in its own Court and the statement before Magistrate under S. 164 as such statement is from the point of view of the tribunal a statement "in relation to a proceeding in that Court," that is, in the Court of the tribunal: 16 L. 153 : 1934 Lah. 981.

The mere fact that a Magistrate gives a "*B*" summary does not bring the offence in relation to which that summary is given within the provisions of S. 195 (1) (*b*), for the giving of "*B*" summary is merely an administrative and not a judicial act: I.L.R. (1939) Kar. 388: 1939 Sind 65; I.L.R. (1939) Kar. 241: A.I.R. 1938 Sind 213 (The mere giving of "*B*" summary by a Sub-Divisional Magistrate as an administrative officer is not a proceeding in his Court). See also

I.L.R. (1939) Kar. 648: 1939 Sind 78; I.L.R. (1947) Lah. 645 (F.B.); A.I.R. 1961 Raj. 231 and 27 Cut. L.T. 416, cited in Note 15, *infra*. But see *contra* 47 Bom. L.R. 644, cited in the same Note, See also Note 15 under S. 173.

An offence under S. 200 read with S. 199, I.P.C., alleged to have been committed in a proceeding before the Official Assignee for a composition or scheme, must be taken as alleged to have been committed in relation to a proceeding in the Insolvency Court and consequently in the absence of any complaint in writing of the Insolvency Court, the Magistrate is debarred from taking cognizance of the same: I.L.R. (1942) 1 Cal. 278 : 1942 C. 79; (1957) 2 M L.J. 348 : A.I.R. 1958 Mad. 69 : 1958 Cr.L.J. 197 (False statement made by insolvent in his examination under S. 33 (2), Presidency Towns Insolvency Act). Where the accused fabricated false evidence with the intention of using it in a subsequeut civil suit, and the suit was disposed of, and a complaint was preferred to a Magistrate against the accused for offence under S. 193, I.P.C. Held, the sanction (now complaint) of civil Court was necessary and the Magistrate could not take cognizance of the offence without such sanction (complaint): 39 M. 677 : 31 I.C. 161, distinguishing 4 Bom. L.R. 268; 12 C.W.N. 822 and 14 C.W.N. 479. The petitioner was said to have fabricated a kabilnama which was registered, and he subsequently brought a suit in the Munsif's Court for restitution of conjugal rights and filed a certified copy of the kabilnama along with the plaint as proof of marriage and asked the Court to cause the original to be produced: Held, under S. 195 (1) (*b*), no Court could take cognizance of an offence under S. 193, I.P.C., imbuted to the petitioner except on a complaint of the Munsif's Court or of some other Court to which the Munsif's Court was subordinate, such offence being committed in relation to judicial proceeding in the Munsif's Court: 17 C.W.N. 937 : 14 Cr.L.J. 289. Where the alleged fabrication of evidence was not with the intention of that false evidence being used in a Court of law, but with the intention of its influencing the police in the investigation into the circumstances under which the accused's wife had met her death, the mere fact that the question might possibly arise in a Court of Law in some future proceeding would not bring the case within the scope of this Cl. (*b*): 52 Bom. 385 : 1928 Bom. 130. Where *W* instituted a suit for Rs. 113 in *S* and obtained decree of Rs. 44 only, and the suit regarding the remainder was dismissed, and he then presented a fresh suit at *K* on the same cause of action and got an *ex parte* decree of the disallowed claim, and the original Court took proceedings under S. 195, Cr.P. Code, and made a complaint under S. 210, I.P.C., held, the institution of the second suit and the obtaining of a decree by fraudulent means if proved, cannot be held to be an offence committed in relation to proceedings in the first Court: 6 L. 445 : 1925 L. 524. Where a party, who had brought a civil suit, had not himself fabricated the evidence in relation to that suit, but was challenging a certain document which the opposite party might produce against him to his prejudice as being false and fabricated and which was not produced, and the party succeeds in a suit such party is entitled to file a complaint against the other party under Ss. 192 and 193, I.P.C., and it is not necessary that the Court should file a complaint under S. 195 (1) (*b*), as the offence could not be alleged to have been committed within S. 195 (1) (*b*) in relation to any proceedings in Court: 32Bom.L.R. 589 : 1930 Bom. 337, distinguishing 24 Bom. L.R. 1153 and 39 M. 677. Where in a suit to enforce registration of a deed of settlement the trial Court passed a decree relying mainly on the evidence given before the District Registrar and on appeal the document was discovered to be a forgery and an application was made under S. 476 to file a complaint. Held, that, as the depositions were given before the Registrar and not before the civil Court Cl. (*b*) of S. 195 (1) had no application; that the writer and attestors were not parties to the proceeding and therefore Cl. (*c*) of S. 195 (1) had no application; but that a complaint could be lodged against the plaintiff who had deposed in Court: 57 M. 682 : 1934 M. 316 : 66 M.L.J. 471.

As regards when offence under S. 211, I.P.C., is committed in relation to a proceeding in Court, see Note 15, *infra*.

6. Offence committed in trial Court, if committed also in relation to appeal.—Where the offences named in Cl. (*b*) are committed in relation to the proceeding in the trial Court the offences should be taken to have been committed also in relation to the appeal before the High Court and the High Court may after recording a finding under S. 476 (1) direct a complaint to be filed: 1931 A.L.J. 829: 1931 All. 706. But see 41 M. 787. An Appellate Court which is not also a Court to which the trial Court is subordinate within the meaning of the section, as in this

case where the appeal against the order of Sub-Magistrate is heard by a joint Magistrate, by transfer from the District Magistrate, cannot grant sanction for prosecution for perjury committed in the course of the deposition before the Lower Court but relied upon, in the course of the argument in appeal on the ground that the offence was committed before him. The offence is completed in the Lower Court and cannot be said to be repeated: 41 M. 787: 34 M.L.J. 404 (35 A. 90, Dis.); see also 1922 L. 346.

7. Court's power to complain not restricted to parties to proceedings.—See Note 4 under Heading III under S. 476, *infra*.

8. Complaint against witness under S. 193, I.P.C..—See Note 7 under Heading IV under S. 476. A Court has power to file a complaint against a witness—not party to the suit or proceeding under S. 193, Penal Code, as there is nothing in S. 195 (1) (*b*) which confines the powers of the Court to persons who are parties to the procedings. It is S. 195 (1) (*c*) which confines the power of the Court to parties to the proceeding, and then it is in respect of documents and not of oral evidence: 37 Cr.L.J. 1008: 1936 R. 369.

Prosecution for perjury should not be lightly launched in cases where the Court would have to determine the question by merely weighing the evidence on both sides: 5 P. L.J. 23: 21 Cr.L.J. 145; 37 M. 564: 16 Cr.L.J. 167. Mere prospect of a conviction will not suffice, but existence of circumstances rendering prosecution desirable in the public interests is required. Great caution is necessary in allowing prosecutions for perjury, which are in fact an indirect mode of reopening a case upon which a decision had been already given: 6 W. R. 11 (13) (Cr.); 1930 Lah. 55. In cases of offences of perjury, a deposition given by a witness must be read as a whole, and a witness must always be given an opportunity of correcting the answers made by him. The essence of the offence of perjury is an attempt to deceive and mislead the Court. Where therefore a witness makes a false statement and subsequently corrects it during the examination he should not be prosecuted for perjury as he withdraws the lie and leaves the Court under the impression of truth: 19 Bom. L.R. 61: 18 Cr.L.J. 480 relied on in 1933 Sind 412. A case of a witness making contradictory statements in the course of the same deposition is different from a case of a witness making contradictory statements in the course of different deposition recorded at different times. Usually it would not be expedient to prosecute a witness who had made contradictory statements in the course of the same deposition, because the presumption is that the witness is trying to correct a false statement by his subsequent statement, and in such cases some *locus penitentiae* should be given to the witness; but this does not apply where different depositions are recorded after an interval of time: 31 N.L.R. 308: 1935 N. 145; referring to 1927 N. 189. No prosecution should be launched where the witness has corrected his false statement in his cross-examination: 29 Cr.L.J. 679: 1928 Lah. 862; see also 11 I. C. 589: 230 P.L.R. 1911; Rat. 588 witness should not be improperly dealt with. Where a witness makes false statements before the police under S. 164, and before the committing Magistrate, but retracts the same in the Sessions Court as being false and the retracted statements are found to be false, the prosecution of such witness under S. 193, Penal Code, is inexpedient in the interest of justice: 1933 N. 179: 34 Cr.L.J. 642 (2); but see 1935 N. 145. Before the Court orders a prosecution under S. 476, Cr.P. Code, it has to be satisfied that it is expedient in the interests of justice that there should be a prosecution. Where sanction is sought to prosecute a witness for perjury for making a statement under S. 164, Cr. P. Code, and a contradictory statement afterwards in the committing Magistrate's Court, the Court must first make up its mind whether it was the statement under S. 164, Cr.P. Code, or the statement subsequently made in Court which is false. If the statement made in Court is false, it is in the interests of justice that there should be a prosecution. But there can be no prosecution where the Court is satisfied that it is the earlier statement under S. 164, Cr.P. Code, which is false or where the Court is unable to determine which of the two statements is false: 43 Bom. L.R. 864: A.I.R. 1941 Bom. 408: I.L.R. (1942) B. 26, followed in (1953) 1 M.L.J. 793: A.I.R. 1953 Mad. 745; (1963) 1 Andh. W.R. 191: (1963) M.L.J. (Cri.) 150 (Prosecution under S. 479-A) and A.I.R. 1963 Manipur 21: 1963 (2) Cr.L.J. 284 and cited with approval in A.I.R. 1961 Pat. 387: 1961 (2) Cr.L.J. 524. In case a complaint is lodged against a witness to the effect that either his statement recorded by a Judicial Magistrate under S. 164, Cr.P.C. or his deposition in the enquiry held by the committing Magistrate is false, there may be

a conviction of the intentionally giving false evidence as is illustrated is in Illustration (*b*) to S. 236, Cr.P.C. However, the question to be considered in such a situation, as contemplated by S. 479-A, Cr.P.C., is whether it is expedient in the interests of justice on the material to file a complaint against the witness. The principle that is applicable in the consideration of this question is; assuming that a man making a statement on oath before a Magistrate under S. 164 does not speak the truth but tells the truth when subsequently he goes into the witness-box, to prosecute him, who has resiled from a false statement made under S. 164 is to encourage him in the belief that it pays to tell a lie and stick to it. It is far better that a man should escape punishment for having made a false statement under S. 164, than that he should be induced that it is to his interest, however false the statement may have been, to adhere to it, and thereby save himself from prosecution. The danger of such a course leading to the conviction of innocent persons is too great to be risked. *Held*, that a perusal of the orders of the Magistrate, the complaint and the material on record showed that it could not be concluded with certainity or with satisfaction that it was the statement by the witness under S. 164, Cr.P.C., which was true and the statement which was made in the enquiry which was false. Consequently, it was not expedient in the interests of justice to prosecute the witness. (A.I.R. 1941 Bom. 408, Foll.): (1963) 1 An. W.R. 191: 1963 (2) Cr.L.J. 494: A.I.R. 1963 Andh. Pra. 433. See also A.I.R. 1954 Mad. 303: 1954 Cr.L.J. 374. When a person makes two contradictory statements, one recorded under S. 164, Cr.PC. and another as a witness in Court, a *prima facie* case is made out for launching a complaint for perjury. It is not necessary to investigate and find out whether the deposition recorded under S. 164, Cr.P.C. or the deposition given in Court is false. But though a *prima facie* case of perjury is made out, it does not mean that in every case of perjury the Court has to launch a complaint. The Court has to consider whether it is expedient in the interests of justice to launch a prosecution and in doing so the Court has to consider whether the nature of the perjury is such that it requires a prosecution, and also the conditions under which the statement was recorded, *viz.*, the tutoring or enforcing which the deponent always alleges when he resiles from his statement and secondly whether the statement under S. 164, Cr.P.C., would have been false: *Ibid.*

In the course of a criminal trial, the accused gave evidence. The Magistrate considered that he had given false evidence. The Sessions Judge on appeal believed his evidence. The High Court on further appeal concurred with the Magistrate as regards his evidence. Later, the Public Prosecutor moved the Sessions Judge, the successor-in-office of the Judge who had tried the case, to institute a complaint against the accused under S. 193, I.P.C. and the same was ordered. In appeal the accused objected to the complaint on the ground that the lower Court had not exercised its discretion properly in view of the fact that different opinions had been taken of his evidence by different Courts, that the High Court itself had not thought fit to institute proceedings against him and that the punishment inflicted on him departmentally was sufficient: Held, that under those circumstances, the Sessions Court ought not to have initiated further proceedings: 1931 Lah. 404: 32 Cr.L.J. 652. The accused who was convicted of theft thirty years ago, in the course of a cross-examination in a subsequent case, was-asked about this conviction which he denied. Thereupon the opposite party applied for and obtained sanction to prosecute him for perjury: Held, that the sanction had been improperly granted under the circumstances: 16 A.L.J. 923; 20 Cr.L.J. 2; see also as to false statement by accused: 28 A. 331: 3 A.L.J. 98: 19 A. 200.

As to perjury by approver, see 10 B. 190 (193). As to false statement in a departmental enquiry, see 23 M. 223: 1 Weir 152. As to the case of perjury and abetment thereof during police investigation, which subsequently ends in conviction, see 14 Bom. L.R. 715: 13 Cr.L.J. 751.

Several false statements in single deposition —Several false statements in a single deposition form one aggregate case of giving false evidence: 36 C. 808: 13 C.W.N. 942.

Prosecution should not be launched where there is some doubt.—There should generally be no prosecution for perjury in repect of a piece of evidence where the trial Court and the Appellate Court have taken different views as to its credibility: 3 P.L.T. 60: 22 Cr.L.J. 756. See also 1931 Lah. 404: 32 Cr.L.J. 652. When a trial Court which has the advantage of seeing a witness in the box and can get acquainted with the full facts in connection with the case, refuses to prosecute a witness, the Sessions Judge should not in general, unless a clear case is made out against the

witness, adopt a different view and launch a prosecution: 21 Cr.L.J. 500: 56 I. C. 660 (Pat.); 1932 A. 674. Prosecution should not be launched unless the Court has satisfied itself that there are favourable chances of obtaining a conviction: 24 Bom. L.R. 45: 1922 B. 38; 21 Cr.L.J. 145; see also Notes under S. 476. Identification by a police-officer stating falsely that he recognised the accused by the flash of a revolver is not a fit cause for launching a prosecution of the officer, as such identification is not impossible: 10 Cr.L.J. 7: 2 I.C. 431.

Contradictory statements.—Prosecution for perjury should not be launched on the basis of two contradictory statements where the two statements are reconcilable and every possible presumption must be in favour of such reconciliation: 7 S.L.R. 108: 15 Cr.L.J. 488 following 7 A. 44; see also 1934 A. 83. Where the statements complained of were made in the course of lengthy cross-examination and are not absolutely irreconcilable for which explanations, which go far to reconcile them, have been subsequently given, it is inexpedient to launch a prosecution for perjury: 19 Cr.L.J. 234: 43 I.C. 826; see also 27 M.L.J. 586: 15 Cr.L.J. 612; 2 Weir 168; 2 Weir 169; 3 C.W.N. 81; 9 Cr. L.J. 304; 14 C.W.N. 767: 37 C. 618; 30 P.R. 1901; 11 B.H.C.R. 34 (35); Rat. 224; 36 P.R. 1890. In the absence of a direct contradiction in the statements, the mere fact of their being contradictory statements, especially when they are immediately followed by explanation and corrections, is no ground to launch a prosecution: 18 Cr.L.J. 143: 5 L. W. 218. An opportunity should be given to the petitioner to explain what he meant by the two apparently contradictory statements and in the absence of any material on the record it is impossible to find positively that the case was one of deliberate falsehood, and, therefore liable to be dealt with under S. 193, I.P.C.: 3 L.L.J. 442; see also 17 Cr.L.J. 93: 32 I.C. 685; 37 C. 618: 14 C.W. N. 767; 13 Cr.L.J. 56: 13 I.C. 392; 15 C. W. N. 169: 12 Cr.L.J. 11 (unconscious deviation into truth). A prosecution should not be based merely on a discrepancy between the statement made before the trial Court on oath and that recorded in the course of mutation proceedings which was not on oath and to which the attention of the witness was not called in the course of the examination before the trial Judge: 7 A.L.J. 647: 11 Cr. L. J. 445.

Replication filed by party under O. 6, R. 5, C. P. C., but rejected by Court can be used for prosecution.—See 41 P.L.R. 652: 1939 Lah. 529.

9. Complaint for perjury, what to contain.—See also Heading VI, under S. 476. In the case of an offence under S. 193, I.P.C., the complaint itself must state what was the false evidence given, without leaving it to the Magistrate to fish about and find it: 48 M. 395: 1925 M. 609: 48 M. L. J. 290. Under the old section also, it was held in a case where sanction was given to prosecute for giving false evidence, the actual statements which are alleged to be false should be mentioned in the sanction: 24 Bom. L. R. 45: 23 Cr.L.J. 176; 36 C. 808: 13 C. W. N. 942; (1913) 1 U.B.R. 166: 14 Cr.L.J. 422 relying on 18 A. 203. Where the particular passsages complained of as being perjured evidence were not set out in the order of the District Judge but were set out in the application for sanction the order of sanction must be deemed to have been passed with respect to the statements alleged in the application: 26 Cr.L.J. 90: 1924 A. 563. Where an order is made under S. 476, Cr.P. Code, to make a complaint in respect of contradictory statements made by witnesses at different stages of the proceedings, it is wrong to say that the complaint is vitiated by the absence of an express finding as to which of the two statements is false. This view of the law is contrary to the provisions of S. 236, Cr.P. Code, and the principle underlying prosecutions under S. 193, I.P. Code. Even if it cannot be proved which of the contradictory statements is false a person may be charged and convicted in the alternative of intentionally giving false evidence at one stage or another: A.I.R. 1948 Mad. 487: (1947) 1 M.L.J. 197.

10. Court by which complaint of perjury should be made.—S. 479-A added by Act (XXVI of 1955) provides a special procedure in regard to the prosecution of a witness who has intentionally given false evidence in any stage of a judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of a judicial proceeding. Sub-section (6) of that section provides that Ss. 476 to 479 shall not apply to such cases. Under that section the Court which sees and hears the evidence could make a complaint at the time of the delivery of the judgment or the final order after following the procedure prescribed therein. In case where no complaint has been made by the trial Court, the Appellate Court while heaving the appeal from the decission of the Court may, if it thinks fit, make a complaint.

Where a Magistrate makes a complaint under S. 193, I.P.C., in respect of the statement made in his Court on the definite allegation that the particular portion of that statement was false, the provisions of S. 195, Cr. P. Code, are fully complied with and the accused can only be charged on the definite allegation that he had intentionally given false evidence before the Magistrate. The accused cannot be charged in the alternative that his previous statement in certain suit before the Civil Judge was false as such a charge requires a complaint in respect of the statement by the Civil Judge. In the absence of such a complaint from the Civil Judge, the offence in the alternative in respect of the statement before the Civil Judge made in the other proceeding could not be the subject of the charge: I.L.R. (1957) 7 Raj. 756: 1958 Raj. L.W. 417: 1958 Cr.L.J. 1241: A.I.R. 1958 Raj. 240.

A made certain statement before *B*, a Magistrate of Second Class, in the course of an enquiry directed by *C*, a First Class Magistrate. Before the Magistrate *C*, *A* however made a contrary statement and stated that his prior statement was false; *C*, thereupon, filed a complaint against *A* for trial of *A* for an offence under S. 193, Indian Penal Code. *A* was tried and convicted by another Magistrate. On revision against the order. Held, that there being nothing else apart from the contradictory character of the statement, the Magistrate *C* was not in a position to decide which of these statements was false and hence could not file a complaint under S. 195 (1) (*b*) in respect of any offence committed before him. (2) Further, *C* could not file a complaint on behalf Magistrate *B* as *B's* Court was not subordinate to *C's* Court. Hence the cognizance taken on the complaint of *C* was bad and the whole trial illegal: 1956 Cr.L.J. 398: 59 Cal. W.N. 604: A.I.R. 1956 Cal. 63.

11. Section 196, Indian Penal Code.—Using false evidence.—Plaintiff sued for cancellation of two documents alleged to have been fraudulently obtained from her and obtained a decree. Pending the trial, the defendants produced the deeds in obedience to orders of the Court. On an application for sanction to prosecute the defendants for an offence under S. 196, I.P.C. Held, that the defendants had not deliberately used the documents as evidence, that they had disclosed the document only under directions of the Court, and in the absence of any independent volition on their part they could not be convicted under S. 196, I.P.C.: 3 R. 36: 1925 R. 191, referring to 36 M. 392; 36 M. 387.

12. Section 206, Indian Penal Code.—Fraudulent removal of property.—Removal of attached property by accused—Accused acting openly and without any element of secrecy or deception—Removal does not amount to a 'fraudulent removal' within the meaning of S. 206, Penal Code, though it might be a 'dishonest removal' and might even amount to robbery and not merely theft. Hence sanction for the institution of complaint by the concerned civil Court under S. 195 (1) (*b*) is not necessary to prosecute the accused: (1962) 2 Mad. L.J. 285: 1962 (2) Cr.L.J. 555.

13. Section 209, Indian Penal Code.—False claim made in suit.—A defendant, against whom an *ex parte* decree has been passed, need not have that decree set aside before moving the Court to prosecute the plaintiff for bringing a false suit. The fact that the period of limitation for setting aside the *ex parte* decree has expired is no bar to the grant of sanction. When the offence against public justice has been committed the offenders are liable to punishment irrespective of the state of affairs in the civil Court: see 2 P.L.J. 688: 19 Cr.L.J. 146. See also Note 4 under Heading III under S. 476.

14. Section 210, I.P.C.—Omission to give credit in execution for money paid.—Prosecution of a decree-holder under S. 210, I.P.C., for failing to give credit in execution for a sum paid to him should not be withheld simply because the judgment-debtor making the payment has not been prejudiced or that there is no satisfactory proof of the payment: 18 Cr.L.J. 619: 39 I.C. 987. The executing Court is prohibited from recognising an uncertified adjustment or payment of the decree by the provisions of O. 21, R. 2, C.P.C. But this does not prevent the Court from enquiring into the alleged adjustment for proceeding under S. 476 of the Cr.P.C., and sanctioning a prosecution under S. 210, I.P.C., for the fraudulent execution of a decree: 9 R. 104: 1931 R. 148.

15. Section 211, I.P.C.—Making false charge—Offence, when committed in relation to a proceeding in Court.—S. 195 (1) (*b*), Cr.P.C., is a bar to the cognizance of an offence under S. 211, I.P.C., alleged to have been committed in or in relation to a proceeding in a Court except on the complaint in writing by that Court or some other Court to which that Court is subordinate If

there is no such complaint in writing, it is not open to the Magistrate to take cognizance under S. 190 (1) (*c*) of the Code: 1930 P. 346: 31 Cr.L.J. 494. See also 14 Bom.L.R. 362 (364); A.I.R. 1947 Pat. 64: 48 Cr.L.J. 264. Petitioner filing complaint before Sub-Divisional Magistrate—Magistrate sending it for enquiry to 1st Class Magistrate—On receipt of Magistrate's report that the complaint should be dismissed and the petitioner should be prosecuted under S. 211, Penal Code, Sub-Divisional Magistrate taking cognizance of the offence under S. 211—Held, the Sub-Divisional Magistrate was not competent to take cognizance of the offence as it had been committed in and in relation to a proceeding in his own Court and if he was of opinion that the petitioner should be prosecuted, he should have filed a complaint for that offence before a Court of competent jurisdiction: 1964 B.L.J.R. 350.

The Court may make a complaint against a person under S. 476 for an offence under S. 211 I.P.C., if it is of opinion that the proceeding before the Court was caused to be started by that person though he was not a party to the proceeding before it. An offence may be committed by a person in relation to a judicial proceeding, though he may not be a party to the proceeding or though it may not have been committed by that person in a judicial proceeding: 1930 C. 671: 31 Cr.L.J. 1145. The mere fact of a telegram sent by the complainant to the *D.S.P.* being exhibited and filed in the case does not make the contents of it a matter "in relation to the proceeding' in the Court, so as to give the Court jurisdiction to take action under S. 476 against persons not parties to the proceeding but mentioned in the telegram: 55 M. 611: 1932 M. 363 (F.B.). When a false charge has been made only to the police, or when the person making the false, charge has not applied to the Magistrate and when no Court proceedings whatever have ensued then no complaint is necessary before a prosecution under S. 211, I.P.C., can be instituted against the informant: 28 Cr.L.J. 934: 23 N.L.R. 136; see also 1930 All. 818; 1933 M.W.N. 873; 180 I.C. 906: 1939 Rang. 148; I.L.R. (1939) Kar. 388: 1939 S. 65 (Complaint of such offence can be made by private individual). Where a person is put on his trial under S. 211, I.P.C., in respect of an alleged false accusation by him against another, it is a question of fact to be decided in the particular circumstances of that case whether that person made such false accusation in contemplation of proceedings which he intended to take in a Court or not. Where the accused has made a false accusation at the same time in two documents, one a petition addressed to the Assistant Superintendent of Police and the other a complaint posted to a criminal Court, it may be fairly presumed that he did so with the object of moving the criminal Court to take proceedings. The offence committed by him, therefore, falls within the purview of the expression "in relation to criminal proceedings within the meaning of the above section": 23 S.L.R. 285: 1929 S. 132; see also 44 C. 650: 20 C.W.N. 1347, followed in 53 M.L.J. 455, but dissented from in 51 A. 382 (384).

Where on the complaint of a person charging another with cheating him, the accused is arrested and released on bail, but subsequently the police report that there is no against him and invite the Magistrate to discharge him, the Magistrate may either discharge the accused or direct further investigation. In either case the Magistrate takes cognizance of the case. Where the Magistrate acting on the police report discharges the accused, the order is a judicial order, and the complainant cannot be prosecuted under S. 211, I.P. Code, without a complaint by the Magistrate, for the alleged false charge is made in or in relation to a proceeding in Court within the meaning of S. 195 (1) (*b*), Cr.P. Code: 43 Bom. L. R. 529: A.I.R. 1941 Bom. 294.

Where the Police on investigation find the complaint false and then send a report to a Magistrate in form *B* under S. 173 (1), Cr. P. Code, and the Magistrate grants a "*B*" summary against the complainant the order passed by the Magistrate is not an administrative order, but a judicial order of the Court. A complaint of a false charge under S. 211, I. P. Code, is necessary by the Court before cognizance can be taken of the same: 47 Bom. L. R. 664. But see *contra*. When a report is made to the police charging another person with the commission of an offence and the police, after investigation, finds that the report is false and has the case cancelled under the provisions of S. 173, Cr.P.C., it is competent to the police-officer to whom the report is made or the officer to whom he is subordinate, to start proceedings under S. 211, I.P.C., against the maker of the report for making a false charge. When a Magistrate before whom the police report is placed under S. 173 orders the case to be struck off accepting the recommendation

of the police, his order is purely administrative or ministerial and not judicial. Since the charge made in the report was not the subject-matter of any judicial proceeding in Court, S. 195 (1) (*b*), has no application. Consequently, a complaint by the Magistrate who had cancelled the case is not necessary: I.L.R. (1947) Lah. 645: A.I.R. 1948 Lah. 184 (F.B.); I.L.R. (1948) Nag. 381: A.I.R. 1948 Nag. 244 (Mere fact that report was made under S. 173, did not mean that there were proceedings in Court): 1961 Raj.L.W. 6: A.I.R. 1961 Raj. 231: 1961 (2) Cr.L.J. 691 (offence of false charge preferred against informant cannot be in relation to proceedings of a Court); 27 Cut.L.T. 416: 1961 (2) Cr.L.J. 878 (The police in such a case can complain under S. 211, I.P.C. If the Magistrate considers that the police investigation was not adequate and that the complainant should get a further opportunity to prove his case prior to his being placed on trial for an offence under S. 211, I.P.C., he can direct an inquiry under S. 476, Cr.P.C.). See also I.L.R. (1939) Kar. 388 and 648 cited under Note 5 *supra*.

A move before a Magistrate for the proper custody of property during the course of investigation by the police also is not a judicial proceeding: I.L.R. (1960) 10 Raj. 1662: 1961 (2) Cr.L.J. 691: A.I.R. 1961 Raj. 231.

There was a police investigation consequent on the petitioner lodging certain information with the police which resulted in the submission of a final report. The police followed it up by a prayer for prosecution of the petitioner under Ss. 211 and 182 of the Penal Code. Held, that from the facts it seemed clear that the complaint of the offence under S. 211 of the Penal Code could not completely be divorced from proceedings in Court or in relation to proceedings in Court. If therefore it is an offence under S. 211 of the Penal Code which is related to a proceeding in Court, it will be the duty of the Court to make the complaint and to follow the procedure laid down under S. 195 (1) (*b*) which will automatically attract the provisions of S. 476. Orders of the Magistrate summoning the petitioner straightway under S. 211/182, Penal Code, could not be upheld: 60 Cal. W.N. 220: 1957 Cr.L.J. 505: A.I.R. 1957 Cal. 251.

Where a person makes a false report to the Police against certain persons resulting in their being arrested and being remanded to custody and leading to an application for bail being made by them. the remand proceedings and the bail proceedings are connected with the false report made by the person and the offence committed by him by making it must be held to be an offence committed in relation to those proceedings As the proceedings are related to the offence in the manner mentioned above, the offence must be said to have been committed in relation to them. Section 195 (1) (*b*) is therefore applicable and no cognizance of the offence can be taken without a complaint by the Magistrate and on a complaint by a private person: 1963 All. L.J. 334: 1963 (2) Cri. L.J. 64.

The rulings in 43 C. 1152; 44 C. 650; 4 P. 323; 33 I.C. 698 have laid down that, where a complainant has made a complaint to the police and subsequently makes a similar complaint to the Magistrate, he has shown that he wants to insist upon a judicial investigation, and he must be deemed to have made his complaint to the Magistrate, so that under the present Code he cannot be prosecuted for having made a false accusation without a complaint by the Magistrate. In 43 C. 1152 (1154, 1155), Mookerjee and Sheepshanks, JJ., distinguished the cases where there is an information to the police only from those where there is also a complaint in Court. Their Lordships pointed out that: " A sanction is requisite in respect of an offence under S. 211 of the I.P.C., only when such offence has been committed in or in relation to any proceeding in any Court; no sanction is necessary when a false charge has been made to the police and has not been followed by a judicial investigation thereof by a Court: 2 Cr.L.J. 66; 13 Cr.L.J. 480, (578). The position is different where, upon the police-report as to the falsity of the complaint, the complainant insists upon a judicial investigation; if he does so, he is deemed to have preferred a complaint to the Magistrate. If the Magistrate finds his case to be false, a sanction would be requisite under S. 195 (1) (*b*) as the offence may be said to have been committed in a proceeding in a Court ": 14 C. 707; 33 C. 1; 10 M. 232. In 44 C. 650, a charge of theft was laid before the police and was followed up by a complaint in Court upon which process was issued and trial held. After his discharge in his trial, the accused sought to prosecute the complainant for laying a false charge before the police and it was held that this could not be done without a complaint under Cl. (*b*) of S. 195 from the Court which discharged the accused. In 4 P. 323 a complaint was lodged before the Magistrate after the police had reported the information lodged by him to be false. It was sought to prosecute the complainant for laying a false charge before the police without a complaint

in writing by the Magistrate who took cognizance of the complaint, but it was held that S. 195 applied and that a sanction or complaint by the Court itself under S. 195 (1) (*b*) was necessary. See also I.L.R. (1946) Mad. 301: (1945) 2 M.L.J. 115: A.I.R. 1945 M. 461; A.I.R. 1960 Raj. 168: 1960 Cr.L.J. 995 (Information to police followed by complaint to Court—Complaint by Court necessary for prosecution of informant under S. 211, I.P.C.).

A person made a false charge before the police which caused the police to submit a report against him, which in its turn caused him to institute a judicial proceeding before the Magistrate by lodging a formal complaint and repeating the allegations made in his information to the police. The Magistrate, on the written complaint of the Sub-Inspector of Police, summoned the petitioner under Ss. 211, 182, I.P.C.: Held, that the laying of the false information before the police was an offence committed in relation to a judicial proceeding and the Magistrate had no jurisdiction to summon the petitioner under S. 211, Penal Code, without a complaint being made in writing by the Court under Cl. (*b*) of S. 195, Cr.P.C.: 5 P. 33: 1925 P. 717; 1939 N.L.J. 210: 1939 N. 226; 43 P.L.R. 191; 1941 Lah. 216; 1940 S. 209: I.L.R. (1940) Kar. 414. A complaint under S. 211, I.P.C., must be filed in accordance with S. 195 (1) (*b*), Cr.P.C., where a "narazi" petition has been filed by the accused impugning the correctness of the police report stating that the case was false and his own case was true: A.I.R. 1947 Cal. 439: 82 Cr.L.J. 286. But where on the police reporting a case to be a false one and praying for the prosecution of the complainant under S. 211, I.P.C., the Magistrate calls upon the complainant to show cause why he should not be prosecuted and the complainant thereafter files a 'narazi' petition by the way of showing cause, complaint by the Magistrate is not necessary before the complainant could be put on his trial: I.L.R. (1939) 1 Cal. 318: 1939 Cal. 273. The accused lodged information at a police-station about an offence alleged to have been committed. On investigation the police-officer found the charge to be untrue and preferred a complaint against the accused for offences under Ss. 211 and 182 of the Penal Code. The Magistrate, however, took cognizance of the charge under S. 182 only and the accused thereupon filed a protest petition stating that the offence which he had informed the police was true and praying for an opportunity to prove the same. The Magistrate eventually committed him to the sessions on a charge under S. 211 and he was convicted at the sessions under that section: Held, that the Magistrate had originally jurisdiction to take cognizance both under S. 182 and S. 211 and if he had so taken cognizance of the offence under S. 211, nothing that could happen subsequently could bring into operation the provisions of S. 195 (1) (*b*) as to deprive him of his jurisdiction to proceed with the complaint of that offence in accordance with law and the accused would not, in that case, have been entitled to any opportunity to show cause why the complaint should not be made; held also that, as, however, the Magistrate had not originally taken cognizance of the charge under S. 211, the protest petition filed by the accused before the Magistrate repeating his charge, amounted to a "complaint" which attracted S. 195 (1) (*b*); and held further that in the absence of a complaint in writing of the Court in which that petition was filed in accordance with S. 195 (1) (*b*), the committal and conviction under S. 211, Penal Code, were without jurisdiction: 11 P. 155: 1932 P. 152; see also 15 P.L.T. 756: 1934 P. 573; 1934 R. 21: 35 Cr.L.J. 1259.

Complaint of offence made to police—Police finding complaint to be false—Complainant filing complaint before Magistrate on same facts—Thereafter Police lodging complainant under S. 182, Penal Code—Police cannot do so and proceedings started against complainant deserve to be quashed: 1961 Raj.L.W. 534: 1962 (1) Cr.L.J. 760: A.I.R. 1962 Raj. 149. Where a false complaint is lodged and dismissed, the Magistrate dismissing the complaint is not competent to proceed against the complainant under S. 211, Penal Code. He should make a comp aint under S. 195, Cr.P.C.: 5 P. 450: 1926 P. 368; see also 1929 P. 92. But it has been held otherwise by Dalal, J., in a case where a person made a false complaint to the police, and subsequently preferred a complaint in the Magistrate's Court on the same allegations, but the complaint was dismissed. The complainant was prosecuted for an offence under S. 211 of the I.P.C., without any complaint from the Magistrate who dismissed the previous complaint: Held, that a complaint from the Magistrate was not necessary because the offence under S. 211 was committed when the false report was made to the police and the subsequent complaint made to the Magistrate was immaterial: 51 A. 382: 1928 A. 765. The learned Judge observed as follows:—A Bench of the Allahabad High Court held definitely in 46 A. 906 (1) that an offence under S. 211, I.P.C., was complete when the charge was made, that is, when a particular person was charged before

the police. The mere fact that subsequent proceedings in Court are taken either against the person originally charged, or against somebody else, cannot affect what was done when the original charge was made, if it was a charge. In that case, reference was made to a Bench of two Judges by Boys, J. That learned Judge disagreed with the view that a false report or a false charge made outside Court, that is an offence under S. 211, Penal Code, committed outside the Court must be held to have been committed in relation to a proceeding in a Court, if subsequently the case came into Court. He found it quite impossible to hold that an offence is committed in relation to a proceeding when in fact there has been no proceeding and to hold it to be in relation to the proceeding in a Court retrospectively because subsequently some proceedings did go into Court; see 51 A. 382 (384): 1928 A. 765.

Where a charge is made by a complainant to the police against more than one individual, and the police, while charging before the Court one or more of such individuals with the offence complained of, do not charge them all, the Court has no jurisdiction to take action, under S. 476, Cr.P.C., against the complainant, under S. 211, I.P.C., in respect of those not so charged: 55 M. 611: 1932 M. 363 (F.B.), following 46 A. 906, 43 C. 1152, and 9 L. 408, and dissenting from 34 A. 522.

16. Judicial determination of complaint necessary before prosecution under S. 211, I.P.C.— Before prosecution under S. 211, I.P.C., is launched, there should be a judicial investigation of the complaint: 1 C.W.N. 452; see also 16 W.R. (Cr.) 77; 16 W.R. (Cr.) 44; 9 Cr.L.J. 152: 1 I.C. 93. If a Magistrate is going to make a charge against a person of an offence under S. 211, I.P.C., the complaint which the Magistrate holds to be false must have been verified and dealt with by the Court according to law, (*i.e.*), when the complaint is made to the Magistrate he is bound to take cognizance of it under S. 200, Cr.P.C., and to verify the complaint in the ordinary way. He cannot instead straight away send it to the Police under S. 156 (3), Cr.P.C.. and then upon issue of *B* summary make a complaint of a false charge: I.L.R. (1938) Kar. 648: 1939 Sind 78. Where a person who is accused of having committed an offence by reason of his having given false information, demands for a judicial investigation into the truth of the charge made by him, he is entitled to be given an opportunity to prove the truth of that charge. During the pendency of such judicial investigation, into what should be regarded as a complaint made by the said person a prosecution against him on the supposition that the charge made by him is false, is unjustified: 1959 All.W.R. (Sup.) 12: 1959 Mad.L.J. (Cri.) 204 (Mys.); 5 C.W.N. 254. The dismissal of a complaint, after hearing the complainant and after considering the results of an investigation ordered under S. 202, *infra*, is a legal determination of the complaint: 6 C.W.N. 295. Where the case is not tried out and never dismissed on evidence taken according to the provisions of S. 202, *infra*, the Magistrate's order is invalid and without jurisdiction: 4 O.C. 127. A Magistrate is not justified in directing the prosecution of a complainant under Ss. 211 and 182, I.P.C., without hearing his witnesses, and without dismissing the complaints: 27 C. 921; see also 30 C. 415; 8 C.L.R. 289; 14 C. 707 (712) (F.B.); 16 W.R. (Cr.) 44; 5 A. 387; 15 A. 336; 7 C. 208 (210); 3 C.W.N. 758 (759); 33 C. 1: 10 C.W.N. 158 (159); 2 C.L.R. 315; 8 C. 435; 8 A. 38; 50 P.R. 1882; 4 C.L.J. 88: 4 Cr.L.J. 68; 4 O.C. 127; 8 C.L.J. 289 (290); 6 C. 584: 8 C.L.R. 265; 2 C.L.R. 389; (1884) A.W.N. 272. A mere investigation by the police and a finding by them that the accused's complaint was false does not amount to a judicial investigation: 1 C.W.N. 452. A Magistrate does not exercise a proper discretion if, upon a police-report, he directs the prosecution of a complainant, without giving him opportunity of proving his case: 5 C.W.N. 254; see also 4 A.W.N. 290. Where a Magistrate, acting on the report of a police-officer, rejected a complaint as false and directed the prosecution of the complainant under S. 182, I.P. Code, held, the Magistrate ought to have sifted for himself the original complaint before directing prosecution on it: 5 A. 36. It is competent for a Magistrate, after examining the complainant and dismissing the complaint, to sanction the prosecution of the complainant under S. 211, I.P. Code: 2 P.R. 1907: 5 Cr.L.J. 491. A notice calling upon a complainant to show cause why he should not be prosecuted for preferring a false charge, ought not to issue, until it has been finally decided that the complaint must be dismissed as false: 12 Cr.L.J. 539. A Magistrate dismissed a complaint for criminal breach of trust without examining the complainant in contravention of S. 203, Cr. P. Code. The Magistrate thereupon granted sanction to prosecute the complainant for bringing a false charge, *i e.*, under S. 211 or S. 182, I.P.C. The complainant applied in revision to the High Court: Held, that the order dismissing the complaint had been made illegally and that the

Magistrate not having dismissed the complaint according to law under S. 203, Cr. P. Code, the complainant could not be convicted of bringing a false charge: 48 Bom. 360: 26 Bom. L.R. 183. Where after the Magistrate had taken steps on the basis of the police-report to initiate proceedings under S. 211, I.P.C., the accused put in a petition protesting against the police investigation and maintaining that his information was true but Magistrate committed the petitioner to Sessions without disposing of the complaint. Held, that the petition was a complaint within the meaning of S. 4 (1) (*h*), Cr.P.C., and that it must be disposed of according to the procedure prescribed by Chapter XVI before any action against the complainant could be taken under S. 211, I.P.C., the case being governed by S. 195 (1) (*b*), Cr. P. C.: 9 P.L.T. 236: 29 Cr. L. J. 660; see also 1929 P. 92: 30 Cr.LJ. 545. But in 6 C. 582, it was held that a commitment for trial for false charge (S. 211, I.P.C.), was valid, though based on a police-report, and though there had been no judicial inquiry into the complaint by the accused. Where a complaint made to the police was, after investigation, reported as false to a Magistrate, and the Magistrate sanctioned the prosecution of the complainant under S. 211, I.P.C., without giving him an opportunity to prove his case, the conviction was held legal: 7 M. 292: 1 Weir 185; see also 15 A. 336; 10 P.L.T. 618: 1930 P. 30; 1930 C. 515: 58 C. 346.

17. Discretion in prosecuting for false charge.—It is not in every case which a Magistrate considers false, that he should direct a prosecution under S. 211, I.P.C.: 34 C.42: 11 C.W.N..125; see also 7 C.L.J. 169: 7 Cr.L.J. 196. The prosecution should be launched only when case is deliberately false: 16 C. 611 (667) charge not proved—Insufficient ground for prosecution. Where a charge in a complaint petition was trivial in nature and the Magistrate acquitted the accused on the ground that the case was of a trivial nature and the complainant was absent: Held, that it was not a case for prosecuting under S. 211 and that it was immaterial whether the serious allegations made in the petition as a motive for the offence, are true or false: 19 Cr. L. J. 767: 46 I.C. 607. The fact that the parties are on bad terms is not a reason for refusing to prosecute. Otherwise there could be no prosecution in any case. Where the Magistrate found after a consideration of the evidence that the charge of criminal breach of trust was false, there is no reason why the petitioner should not be allowed to prosecute his accuser for having brought a false charge: 4 Lah. L. J. 321: 1922 Lah. 403 (1); see also 19 P. R. (Cr.). 1917: 18 Cr. L. J. 548. See also Note 6 under Heading III under S. 476.

18. Notice before prosecution for false charge.—Where the Magistrate dismisses the original complaint upon a report from the police, notice must be given to the complainant to show cause why he should not be prosecuted, and the Magistrate should hear evidence, if necessary, in support of the cause shown. The omission to do so would invalidate the sanction, unless it has occasioned no failure of justice: 10 M. 232 (236): 2 Weir 181 (F.B); see also 15 A. 336; 6 C. 496; 2 C.L.R. 315; 16 W.R. (Cr.) 44. It is settled law that no person should be proceeded against for making a false charge against another unless he has been given an opportunity of substantiating his allegations by the tribunal before which the charge is made and which proposes to take action against him: 13 Lah. 568: 1932 Lah. 246. But where the Magistrate examines the complainant, hears the evidence and acquits or discharge the accused, no previous notice to the complainant is necessary to sanction his prosecution under S. 211, I.P.C.: 10 M. 232 (236): 2 Weir 181 (F.B.). It has been held that no notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed can grant sanction under this section regarding one of the offences specified therein: 12 C. 58 (60) (F. B.). (N. B.—Kernan, J., explained the Calcutta decision to mean only that, when a Magistrate heard and disposed of a case having heard the complainant, no notice was necessary before sanctioning his prosecution under S. 211, I.P.C.: 10 M. 232: 2 Weir 181 (F. B.)).

19. Offence under S. 228, I.P.C.—The provisions of Ss. 190 (1) (*a*) and 195 are not at all affected by those of Ss. 480 and 482, Cr.P.C. Cognizance of an offence punishable under S. 228, I.P.C., can be taken on a complaint of the Court concerned or the offender may be dealt with by the Court concerned as laid down in S. 480 or 482, Cr.P.C.: 1959 A.L.J. 265: A.I.R. 1959 All. 693: 1959 Cr.L.J. 1261.

20. Court by which complaint may be made under Cl. (b)—See also Note 10, supra.—Under S. 195, (1), Cl. (*b*), the only person or Court competent to complaint of offences alleged to have been committed in the proceedings of a particular Court is that Court or some other Court to

which it is subordinate: 13 P.L.T. 370: 1932 P. 243. It is only the Court in question that can file the complaint for the offence committed before it and not the particular public servant concerned: 8 P.L.T. 674: 1927 P. 327. A Sessions Judge is not competent to make a complaint in respect of an offence under S. 211, I.P.C., relating to a first information report lodged before the police, although the police after investigation submitted a charge-sheet to a Magistrate who, after enquiry, committed the case, before the Sessions Judge. The offence cannot be said to have been committed in relation to proceedings in his Court within the meaning of S. 195 (1) (*b*): A.I.R. 1949 Dacca 5: 50 Cr.L.J. 769. Where although the complaint alleged an offence of abetment of forgery and the circumstances adduced might, if proved, substantiate such an offence yet they also substantiated the offence of abetting the fabrication of false evidence in relation to possession proceeding, pending before the Sub-Divisional Magistrate. Held, that under S. 195 (1) (*b*), the only complaint upon which a criminal case could be found would be that of the Sub-Divisional Magistrate himself or of his superior Court: 28 L.W. 687.

R instituted a complaint in the Court of the Sub-Divisional Magistrate against a number of persons, including one *M*. The Magistrate ordered police investigation, and on receipt of police report, transferred the case to the Bench Magistrates for trial of two persons only, namely, *P* and *T*. The complaint was dismissed. Subsequently *M* made an application for prosecution of *R* under S. 211, I.P.C.: Held, that the Bench Magistrates had no jurisdiction to pass an order directing prosecution of *R* as they were never seized of *R's* complaint against *M*: 1931 O. 417: 7 Luck. 222. Where a suit is decreed in part only, the suit regarding the remainder being dismissed, and the plaintiff files a fresh suit in another Court on the same cause of action and obtained a decree by fraudulent means complaint under S. 210, I.P.C., can be made only by the latter Court: 6 Lah. 445: 1925 Lah. 524. Where an offence under S. 211, I.P.C., alleged to have been committed before a Magistrate, was brought to the notice of the District Judge in the course of a civil proceeding, and the District Judge, purporting to act under S. 476 . sent the case to the nearest First Class Magistrate, held, as the alleged offence was not committed before the District Court, or any Court subordinate to it, the First Class Magistrate could not inquire into it, without the sanction of the Sessions Court to which it was subordinate. The mere circumstances that the offices of the Sessions Judge and District Judge were held by the same person did not alter the matter: 4 Bom. L. R. 750. If a case or proceeding has been before various Courts and an offence is alleged to have been committed in that proceeding or case falling under the various sections prescribed in S. 195, Cr.P.C., then all the Courts have jurisdiction to make the complaint though, normally speaking, the proper Court to make the complaint is the Court which finally tried and determined the suit. Hence, Where an offence is committed in the course of a suit before a Court and that suit is subsequently transferred to another Court, the latter Court is competent to make a complaint under S. 195: 190 I.C. 178: 1940 Lah. 292, relying on 1929 Cal. 724. See also 36 Bom. L.R. 221: 1934 B. 185 cited *supra*. See also 3 C.W.N. 33; 6 C.W.N. 35 and Heading II under S.476

Complaint by sarpanch in respect of an offence under S. 228, *Penal Code, with reference to a panel of the Panchayati Adalat is valid.*—See 1951 A.L.J. 551.

21. Omission to mention section of offence in complaint by Court, Effect of.—Omission in a complaint by the Court to refer specifically to the number of the section relating to the offence complained of will not invalidate the prosecution launched by such complaint, where it appears that the complaining Court has complained of facts which constitute the offence and that it had made up its mind that the facts of which it complained required investigation : 70 M.L.J. 109 : 1936 M. 280.

IV. SUB-SECTION (1) (C)—OFFENCES RELATING TO DOCUMENTS GIVEN IN EVIDENCE.

[See also Notes under S. 476.]

Synopsis.

1. Scope of Sub-section (1) (*c*).
2. Clause inapplicable if alleged forged document is not produced in any independent proceeding.

3. Clause inappliciable if offences are committed after termination of procedings in Court.
4. All cases of forgery are included.
5. Offence need not be committed with the intention of producing document in any proceeding.
6. "By a party to any proceeding".
7. Persons not parties to proceeding conspiring with such parties to commit offence covered by clause.
8. Whether Court can file complaint against persons not parties to proceeding—See Note 6 under Heading III under S. 476.
9. Proceedings against both party and witness.
10. "Document" means only orginal document.
11. "Document produced or given in evidence in such proceeding".
12. Forgery committed before production—Relevant date.

---

1. Scope of sub-Section (1) (c).—S. 195 (1) (*c*) of the Cr.P.C., prohibits the Court from taking cognizance of an offence described in S. 463, I.P.C., when such offence is alleged to have been committed by a party to any proceeding in a Court in respect of a document produced in evidence except on the complaint in writing of such Court: 5 Lah. 550; see also 1929 Cal. 539; 1933 Cal. 481; 1937 M.W.N. 92. But no complaint by the Court is necessary for the prosecution with regard to an offence under S. 471, I.P.C., where subsequent to the complaint being preferred and cognizance being taken thereon, a suit was instituted in a Court on the document in question: 56 C. 1041. See also (1952) 2 M.L.J. 706. Where the petitioner filed a plaint in the name of his father by forging his signature on the Vakalatnama as also on the plaint, the petitioner not being a party to the suit which had been filed in the name of his father no complaint can be lodged against him for forgery by the Court. (A.I.R.1945 Pat.362, Foll.): 1960 Cr.L.J. 977 : A.I.R. 1960 Pat. 310. *K* filed a complaint against *B* under S. 404, Penal Code, in respect of certain articles said to have been taken possession of by him, which he alleged to have been bequeathed to him, and in the course of the proceedings produced a will before the Court. After the framing of the charge, but before the final hearing, *K* instituted a civil suit on the strength of the will and withdrew the complaint. The Judge, although a charge had been framed, instead of acquiting, discharged him, and *B* then field a complaint under S.467, Penal Code, against *K* in respect of the will alleging that it was a forged document. The criminal proceeding which had been recommended by the Sessions Judge was stayed pending the civil suit: Held, that *K*, being the prosecutor throughout the criminal proceeding started by him, was a party to that proceeding, and that the document alleged to have been forged having been produced before the criminal Court in that proceeding, no Court could take cognizance of the offence of forgery in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of the said criminal Court or of some other Court to which it was subordinate and that the proceedings started by *B* on a private complaint made by him were illegal and ought tc be quashed: 48 A. 60 : 23 A. L. J. 956 : 31 Cr. L. J. 589 : 1929 L. 785 (2). A tampered document was produced before a Magistrate in a theft case. Subsequently it was reported to Registrar that the registar containing a copy of a sale-deed was tampered with by altering the figure regarding the number of trees sold under the deed. He therefore started an inquiry and came to the conclusion that the original sale-deed as well as the copy kept in the Registrar's Office were so altered. Accordingly he lodged a complaint in the Court of the Sub-Divisional Magistrate against the scribe under S. 467, I.P.C., and against the vendee and the attesting witness under Ss. 467/109, I.P.C., in respect of the forgery of the aforesaid sale-deed. A preliminary objection was raised by the accused that the Sub-Divisional Magistrate had no jurisdiction to take cognizance of the offence on the complaint of the District Registrar as he was not the Court before which the alleged forged document was produced within the meaning of S. 195 (1) (*c*): Held, that the complaint came within S. 190 (1) (*a*), and was tenable and

S. 195 (1) (*c*) was no bar as none of the accused were parties to the proceedings in the criminal case (1928 S. 69, Rel. on); Held further, that the vendee was also not a party to that proceeding as it was not started upon his complaint but upon report made by the police (48 A. 60, Dist.): 1935 N. 190. Sanction under S. 195 (1) (*c*), Cr.P.C., is not necessary for a prosecution under S. 477-A, I.P.C., since the latter section does not contain any reference to forgery: 25 S.L.R. 471 : 33 Cr. L.J. 328. See also 1932 S. 53.

The offence or offences, in which S. 195 (1) (*c*) read which Cl. (3) now Cl. (4) required that sanction (now complaint) should be given by Court which respect to documents produced in Court, must be offences committed by parties to the proceedings, whether the offence be one of the substantive offences described in S. 463 or punishable under Ss. 471, 475 or 476, I.P.C. or only amounts to abetment of any such offences. There is nothing to prevent the trial of an abettor of an offence committed by a party to a proceeding in Court without a complaint by the Court, when the abettor is not a party to such proceeding: 32 A. 74 : 6 A.L.J.983; 15 C.W.N.565 : 9 I.C. 577; 10 L. 442; 58 C. 727 : 1931 C. 438; 9 I.C. 577 : 12 Cr.L.J. 101; 10 L. 442; 1928 L. 787, dissenting from 12 Bom. L.R. 383; I.L.R. (1940) Kar. 435 : 1940 S. 100; A.I.R. 1948 Pat. 5: 48 Cr. L.J. 942 (no complaint necessary to prosecute stranger to proceedings).

Where an offence of forgery is committed by more than one person, and one of them at least is a party to the proceeding in which the document is produced, such paticipants in the forgery as are not parties to the proceeding may be prosecuted otherwise than under the provisions of Ss. 195 and 476, Cr.P.C. The term "offence" used in S. 195 (1) (*c*) refers only to the share taken in the transaction by a party. The power, therefore, to proceed against non-parties is not affected: 28 L.W. 769 : 1929 M. 115. The decision to the contrary in 12 Bom.L.R. 383 was not followed in this case. The current of opinion is in accordance with the Madras view: See 2 R. 374; 3 R. 48; 1928 A. 21; 10 L. 442; 1929 L. 785; I.L.R. (1949) All. 715: A.I.R. 1949 All. 392.

2. Clause inapplicable if alleged forged document is not produced in any independent proceeding.—S. 195 (1) (*c*) has no application when the document which is alleged to be forged is produced at the trial of the person alleged to have forged it, not having been produced in any independent proceeding. Where a police Sub-Inspector was prosecuted for causing hurt to extort a confession and with wrongful confinement and in the course of his trial he produced for the first time his case diary in which it was found he had committed forgery, no sanction by the committing Magistrate is necessary for adding a charge under S. 465 also against the accused: 56 Bom. 488 : 1932 Bom. 545, followed in I.L.R. (1940) Kar. 95 : 1939 S. 222. See also A.I.R. 1937 L. 238 : 38 Cr.L.J. 581 (2).

3. Clause inapplicable if offences are committed after termination of proceedings in Court.—An offence of forgery alleged to have been committed in respect of a document in the custody of the Court after the termination of the proceedings for which it was filed is outside the scope of the provisions of S.476 and the Court has no jurisdiction to take action under that section for the alleged offence: 55 Mad. 531 : 1932 Mad. 290 : 62 M.L.J. 310; 1940 M.W.N. 865 (user of forged documents after termination of proceedings in suit. No complaint by Court is necessary); 51 C.L.J. 51 : 1930 C. 278. The words "committed by a party to any proceeding in any Court" in S. 195 (1) (*c*) imply that the proceeding must be pending at the material time, (*i. e.*) at the time the Magistrate takes cognizance of the criminal complaint: 38 Bom. L.R. 964 : 1937 B. 14, dissented from in A.I.R. 1953 H.P. 117.

4. All cases of forgery are included.—The object of mentioning S. 463, I.P.C., in S. 195 (*c*), Cr.P.C., is to include all cases of forgery, whatever the nature of the fraudulent intention may be: 36 M. 387 : 1912 M.W.N. 31. The expression is used as a general term in S. 463, I.P.C. and that section is referred to in a comprehensive sense in the present section, so as to embrace all species of forgery punishable under that Code including one under S. 467, I.P.C.: 12 B. 36 (41); 14 C.W.N. 479 : 11 Cr.L.J. 280; Per Murphey, J., in 55 B. 461 : 1931 B. 105. The words "any offence described in S. 463" must be taken to mean all forms of forgery and S. 195 (1) (*c*) is clearly designed to cover all of them: 26 Cr.L.J. 1115 : 1925 N. 337; 5 L. 550 : 1925 Lah. 266; A.I.R. 1953 A.P. 117. See 1953 N.L.J. 583 : A.I.R. 1954 Nag. 95. (offence under S. 474, I.P.C., is not one which is described in S. 463, I.P.C.).

5. Offence need not be committed with the intention of producing document in any proceeding.—Section 195 (1) (*c*) requires that the offence in question should be alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding; but it does not say that the offence should have been committed by the party with the intention of its being produced in the said proceeding: 1953 Cr.L.J. 1683 : A.I.R. 1953 Him. Pra. 117.

6. "By a party to any proceeding".—The word "party" is not used in this section in any unusual or extended sense, so as to mean or include any person participating in or interested in litigation: 38 Bom. L.R. 964, following 58 C. 727.

Under this clause, it is only necessary that the offence must be alleged to have been committed by a party. It is not necessary that the document in respect of which the offence has been committed must be produced or given in evidence by the party himself. It has been held that S. 195 (1) (*c*), covers any document produced or given in evidence in the course of a proceeding whether produced or given in evidence by the party who is alleged to have committed the offence or by any one else: 49 B. 608 : 1925 B. 433; I.L.R. (1942) Kar. 12 : 1942 S. 62; A.I.R. 1953 H.P.117:1953 Cr.L.J. 1683; I.L.R. (1951) 1 Cal. 243. The words 'produced or given in evidence' in S. 195 (1) (*c*) mean produced by anyone and not necessarly by the accused who is sought to be prosecuted. Sometimes a witness may produce a document in Court and it may be used by a party in the proceeding. The person who uses the document may be different from the person who produced it in Court although technically the party is deemed to have produced it: (1963) 4 Guj.L.R. 647 : 1963 (2) Cr.L.J. 558.

In liquidation proceedings in respect of a Bank the provisional liquidator was ordered to take possession of the books of account and assests of the Bank. The accused, a managing director of the Bank, produced before the liquidator as good assets of bank certain promissory notes which were alleged to be forged. The accused was tried for offences under S. 471 read with S. 467, Penal Code. Held, that (*i*) the accused was a party to the liquidation proceedings within the meaning of that word as used in S. 195 (1) (*c*). The word "party" clearly, if it is to have any effect as regards criminal Courts, cannot be given the strict meaning appropriate in ordinary civil cases. (*ii*) That the alleged user by the accused of forged documente must be taken to have been made in a judicial proceedings namely the liquidation proceedings. The fact that the accused did not personally make over the pronotes into the hands of the Court was immaterial. (*iii*) Consequently, no Courts could take cognizance of the offence without a complaint from the company judge: I.L.R. (1951) 1 Cal. 243. This case was dissented from in 1963 Raj. L.W. 416.

S. 195 (1) (*c*) cannot apply unless the accused or one of the accused persons was a party to some proceeding in Court. A guardian or next friend on a minor party is not a party as contemplated by S. 195 (1) (*c*). Consequently no complaint by the Court is necessary for prosecuting such guardian or next friend for an offence mentioned in the section: 38 Bom.L.R. 964; see also 30 A. 55; 7 C. 137; 3 M. 3. A guardian instituting a suit on behalf of a minor is not a " party " within the meaning of S. 195 (1) (*c*), against whom a complaint can be directed to issue by an order under S. 476, for using a false document in support of the suit claim. It would, however, be open to the Court to proceed against him under S. 193: A.I.R. 1944 Mad. 528: (1944) 2 M.L.J. 141.

A recognized agent is not a " party to the proceeding " within the meaning of S. 195 (*c*): 12 Cr.L.J. 87: 8 I.C. 1202; I.L.R. (1963) 13 Raj. 928: 1963 Raj. L. W. 416.

A vakil holding a special vakalat is not a ' party ' for the purpose of S. 195 (1) (*c*) and he cannot be convicted and sentenced in the client's place: 28 L.W. 769: see also 1929 L. 125 (2); 1963 Raj. L. W. 416.

A witness is not a party to the suit: 3 M. 400: 2 Weir 170; 18 B. 581; 25 M. 671: 2 Weir 173; 32 A. 74; 30 M. 226; 58 C. 727 (733). No sanction (nor complaint) is necessary to prosecute a witness in respect of the offences mentioned in sub-Cl. (*c*) of Cl. (1), even where there are other charges against him involving the necessity of sanction; and the witness may be tried for the first mentioned offences without sanction, even though no sanction is given in

respect of the latter offences: 12 Cr.L.J. 101:15 C.W.N. 565; see also 26 M.L.J. 220: 15 Cr.L.J. 242 which dissents from 11 Cr.L.J. 368; 15 S.L.R. 149: 23 Cr.L.J. 31; see also 1929 Lah. 125 (2); (1940) 2 M.L.J. 1063: 1941 M. 323 (Complaint of Court not necessary for prosecuting witnesses for offence under S. 467, I.P.C.); 65 C.W.N. 600 (complaint cannot be made against witness in accordance with S. 195 (1) (*c*) read with S. 476).

A receiver is not a party to a proceeding under S. 195 (*c*), Cr.P. Code, and therefore the section does not apply to an offence alleged to be committed by a receiver: 36 Bom. L.R. 649: 1934 B. 306.

Where a Subordinate Judge has abetted an offence under S. 193, I.P.C. and is also alleged to have committed offences under Ss. 465, 466, I.P.C., complaint by a Court, so far as the offences under Ss. 465 and 466, I.P.C., are concerned, is not necessary, as he is not a party to the proceeding before the Court: 190 I.C. 178: 1940 Lah. 292.

In a criminal case launched on behalf of the petitioners by *R.* the latter filed cettain documents, which were held as forged. Held, that the prosecution under S. 476 in respect of the petitioners, who did not file the documents nor came to depose in the prosecution case, was not warranted by the terms of S. 476, merely because they were members of the family of *R*: 1954 Cr.L.J. 803: A.I.R. 1954 Pat. 287.

7. **Persons not parties to proceeding conspring with such parties to commit offence covered by Clause.**—A party to suit accused of an offence covered by S. 195 cannot be tried, without a complaint under S. 476 but persons not parties to the suit can be so prosecuted. The consent of the Local Government is necessary under S. 196-A of the Cr.P.Code, in the case of persons who are not parties to the proceedings, but who conspire with such parties to commit an offence covered by S. 195 (1): 1929 L. 785 (2).

8. **Whether Court can file complaint against persons not parties to proceeding.**—See Note 6 under Heading III under S. 476.

9. **Prosecution against both party and witness.**—Under the old Code it was held that the fact that no sanction was needed to prosecute a witness for an offence relating to documents, would not invalidate a prosecution commenced on a sanction which included both a party and a witness: 8 B. 581 (585). But the contrary was held in 1934 Pesh. 81 (2) where a civil Court filed a complaint under Ss. 195 and 476, Cr.P.C., against the party to the proceedings and the witnesses and the writer of a receipt, it cannot be cloaked with two capacities with reference to one and the same complaint; firstly that of a private person with respect to the two witnesses and the writer, and secondly that of a Court qua a party. The ordinary inference is that the Sub-Judge acted as a Court under the impression that he had jurisdiction to make a complaint under S. 476 read with S. 195 against all the accused, while in fact he was not competent to do so, so far as the two witnesses and the writer of the document were concerned. His order is manifestly without jurisdiction and can be set aside by the High Court on revision.

10. **"Decument," means only original document.**—The word "document" in Cl. (*c*), sub-Cl. (1), means only original document and does not include copy of originals produced as secondary evidence: 8 O.C. 313. The appellants were convicted under S. 471, I.P. Code, for having used forged entries in support of a claim in a Revenue Court by producing certified copies of them knowing them to be forged. It was contended by the appellants that the prosecution was bad for want of a complaint by the Revenue Court under S. 195: Held, the words "produced or given in evidence" in S. 195 refer to the production of the original and not of a copy, the Court before which a copy of the document is produced being not really in a position to express any opinion about the genuineness of the original: 29 O.C. 1: 1925 Oudh 413. This decision was approved by the Privy Council in 77 I.A. 7: (1950) 1 M.L.J. 286: A.I.R. 1950 P.C. 31, followed in 1963 (2) Cr.L.J. 698 (S.C.). Where certified copies of the sale deed and not the original were filed in the previous proceedings the absence of a complaint under S. 195 (1) (*c*) would not operate as a bar to the trial of the accused under S. 468 or S. 474, I.P.C.: 1953 N.L.J. 583: A.I.R. 1954 Nag. 95.

11. **"Document produced or given in evidence in such proceeding".**—The word "or" which intervenes between the word "produced" and the words "given in evidence" in S. 195 (1) (*c*),

shows that it is disjunctive and that the procedure is applicable not only in cases where the document has been given in evidence but also in cases where it has been produced. The word "produced" will include cases where a document is filed in Court, though it may not be taken into account by the Court: 9 Pat.L.T. 800. Under the present section the word "produced" shows that the production of a forged document in Court is within the purview of the section as much as giving it in evidence. Per Spencer, J.: "Produced" in S. 195 (1) (*c*) should be read apart from the words "given in evidence" which follow: 14 I.C. 593: 13 Cr.L.J. 241. But see 15 M. 224: 2 M.L.J. 148 holding that where certain forged documents are filed in Court by a party, but not given in evidence, the Court is not competent to order his prosecution, as it cannot go beyond the record. In 22 C. 1004 it was held that where a Munsiff, suspecting that a document that was filed but not given in evidence was tampered with by a witness, held an inquiry and committed him to the Sessions under S. 478, *infra*, the commitment was held good.

Document "produced".—A document, *e.g.*, an account-book, is none the less "produced" before a Court, within the meaning of S. 195 (*c*), because it is brought into Court for the purpose of verifying an extract therefrom made in the plaint according to the provisions of O. 7, R. 17 of the Code of Civil Procedure: 49 A. 898. Where a party to a proceeding hands up a document to the Judge who does not take the document on the file but returns it to the party, the document is "produced" in the proceeding, within the meaning of S. 195 (1) (*c*): 27 Bom.L.R. 1039: 1925 B. 467. Filing of a forged document in a proceeding before a Court amounts to production within the intendment of S. 195 (1) (*c*): A.I.R. 1953 H.P. 117: 1953 Cr.L.J. 1683. Where a forged document is filed in Court as an annexure to a petition it must be taken on have been produced within the meaning of S. 195 (*c*): 28 Cr.L.J. 388: 1927 N. 184. Where, on a document being produced in a civil suit by a defendant for being filed in it, the plaintiff in the suit takes it from the record of the suit before it is actually exhibited and inserts in its place another document, which is subsequently found to be forged by him (plaintiff), the document is produced in the proceeding within the meaning of S. 195 (1) (*c*): (1963) 4 Guj.L.R. 647: 1963 (2) Cri.L.J. 558. The word "produced" does not mean produced in evidence. A warrant with respect to which it was alleged a forgery was committed was produced in the Subordinate Court in the course of execution proceedings after it was returned endorsed by the bailiff as duly served and the claim as satisfied. Held, that the forged warrant was produced in the Subordinate Court within the meaning of S. 195 (1) (*c*): I.L.R. (1942) Kar. 12: A.I.R. 1942 Sind 62, relied on in A.I.R. 1953 H.P. 117. S. 195 (1) (*c*) only requires the production of a forged document in Court or its being given in evidence. The phrase "in or in relation to any proceeding" only occurs in S. 195 (1) (*b*), which has nothing to do with the offence of forgery: 1937 M.W.N. 887.

Production "in such proceeding".—Where the judgment-debtor's application for certification of certain amount, not admitted by decree-holder in his petition for execution, is dismissed as time-barred, the executing Court has no jurisdiction to take notice of the receipt produced by the judgment-debtor after the dismissal of his application, the receipt not being before the Court during the proceeding in Court. If the executing Court inquries into the matter under S. 476; it acts *ultra vires* and a revision lies to High Court both under S. 439, Cr.P.C. and S. 115, Cr.P.C.: 1931 Lah. 105: 32 Cr.L.J. 647.

Production in obedience to summons.—A person cannot be charged under S. 471, I.P. C., in respect of a document produced by him in obedience to a summons: 16 Cr.L.J. 439: 28 M.L.J. 486; 36 M. 387: 22 M.L.J. 141.

12. Forgery committed before production—Relevant date.—In the cases of 38 All. 169; 44 Cal. 1002; 14C.W.N. 479*; 48 All. 60; 5 Lah. 550 and 1932 Sind 90, the view held was that, if at the time

*In 38 A. 169: 17 Cr.L.J. 289, it was held that the words "when such offence has been committed by a party to any proceeding in any Court" refer, not to the date when the offence was committed, but to the date on which the cognizance of the criminal Court is invited. In 44 Cal. 1002, it was held that where, before complaint has been made, a document has been produced in a Court by a party to a proceeding before it, the sanction of such Court is necessary for his prosecution in respect of an antecedent forgery. The same view has been taken in 14 C.W.N. 479.

when the Court is Asked to take cognizance of a complaint, the accused is a party to proceedings n a Court, in which the document has been produced or used in evidence, then the bar contained n S. 195 (1) (*c*) applies. The reasoning adopted in those cases was approved by the Madras High Court in 39 Mad. 677; See 60 Bom. 756 (764). The relevant date which has to be onsidered under S. 195 (1) (*c*) is the date at which a Court is invited to take cognizance of a omplaint. At that moment the Court has to ask itself whether it is debarred from taking ognizance by reason of the provisions of S. 195, and in cases falling under S. 463 or S. 471, I.P.C., ne Court has to see whether the offence in respect of which it is asked to take cognizance is lleged to have been committed by a party to any proceeding in any Court, and in respect of a ocument produced or given in evidence in such proceeding. If at the time when the Court is sked to take cognizance of a complaint the accused is a party to proceedings in a Court in hich the document has been produced or used in evidence, then the bar contained in S. 195 (1) (*c*) pplies. The section applies if at the time when the complaint is lodged the accused person a party to a proceeding. It is not necessary that the alleged offence must be committed by a erson who at the date of the committal of the offence is a party to proceedings in Court, and ust also be in respect of a document produced or given in evidence in such proceeding: 60 . 756: 1936 B. 221, followed in A.I.R. 1953 H.P. 117: 1953 Cr.L.J. 1683. The same view has een taken in the following cases; 59 M.L.J. 229: 1930 M. 869; 1937 M. W. N. 92; 1932 R. 139; L.R. (1944) Nag. 238: 1943 N. 327; 1961 Ker. L.T. 778: 1962 (1) Cr.L.J. 340.

But a contrary view has prevailed in a Full Bench decision of the Allahabad High Court: 3 All. 804 (F.B.), where they definitely hold that S. 195 (1) (*c*) applies only to cases where an ffence, mentioned therein, is committted by a party, as such, to a proceeding in any Court, in spect of a document which has been produced or given in evidence in such proceedings. ocuments forged some time in 1898 and by a person who did not become a party to the present roceedings till the year 1922 when the suit was filed were held not to come within the purview S. 195 (1) (*c*): 53 A. 804 (814) (S.B.), followed in I L.R. (1937) All. 779: 1937 A. 714. In an rly decision, the Calcutta High Court held that sanction of the civil Court was not necessary in e case of an offence that was committed by a prior use of the forged document outside the ourt: 16 Cr.L.J. 617, following 4 Bom. L.R. 268.

V. SUB-SECTION (2)—MEANING OF "COURT".

Synopsis.

1. "Includes", Meaning of.
2. "Court"—Meaning of.
3. Offence before arbitrator.
4. Offence before Commisssioner.
5. Complaint must be made by Court and not by Prosecuting Inspector.
6. Complaint whether should be made by the same Judge—See Note 6 under Heading II under S. 476.
7. What are Courts under the section.
8. What are not Courts under the section.

---

1. **'Includes', Meaning of.**—The word "means" in S. 195, sub-Clause (2), of the old Code s been substituted by the word "includes", which suggests that the term "Court" is intended be a wider expression than a "civil, revenue or criminal Court". If it had not a wider aning, it was wholly unnecessary to say "but does not include a Registrar or Sub-Registrar, etc." Sulaiman, J., (Per Daniels, J., *contra*), in 47 A. 934: 1925 A. 737; A.I.R. 1960 All. 602; A.I.R. 63 All. 395. The view of Sulaiman, J., has been adopted in 1940 N. L. J. 23: 1940 N. 184. hough the word used in S. 195, (2), is "includes", the Courts which can make a complaint der that section are restricted to the Courts detailed in S. 476, Cr.P.C., namely, Civil, Criminal, Revenue: 31 C.W.N. 825: 28 Cr.L.J. 809. The substiiution of the word "includes" in place he word "means" does enlarge the definition of Court but does not enlarge the definition of evenue Court: A.I.R. 1963 S.C. 416 (421).

2. **"Court"—Meaning of.**—The word "Court" in the Code has a wider meaning than a Court of Justice as defined in the Penal Code. It should be given the widest possible meaning, and it includes a tribunal empowered to deal with a particular matter and authorized to receive evidence bearing on that matter, in order to enable it to arrive at a determination: 17 C. 872 (875); see also 11 C.W.N. 909: 6 Cr.L.J. 160, *infra*. The definition of "Court", given in the Evidence Act is framed only for the purposes of that Act, and should not be extended beyond its legitimate scope: 12 B. 36 (43). What distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court: A.I.R. 1956 S.C. 153 (157). Applying this test the Supreme Court has held in the above case that the returning officer deciding on the validity of a nomination paper under S. 36 (2) of the Representation of the People Act is not a Court for the purpose of S. 195 (1) (*b*).

It was held that the word 'Court' in S. 195 (1) (*c*) could not be construed as including a Court in a former Native State such as Baroda State: 49 B. 860: 27 Bom. L.R. 1063.

The 'Court' contemplated by Ss. 195 and 476, Cr.P.C., is the Court before which the offence is committed. Where the offence of perjury was committed before the Sessions Court of Ahmedabad and subsequently a portion of the territory subject to its jurisdiction was placed under the newly constituted Sessions Court of Kaira, held, that the new Sessions Judge though having territorial jurisdiction over the accused has no power to make a complaint regarding the offence committed before the Court at Ahmedabad, because the Cr.P.C., contemplated the trial of such an offence only by the Court before which it was committed: 28 Bom. L.R. 1296: 1927 B. 47. The complaint required by S. 195 (1) (*c*) is the complaint of the Court in which the offence is committed, *i.e.*, the fabricated documents are produced in evidence, and not of the trial Judge necessarily: and where the suit is trial by a Judge of the High Court, the term 'Court' occurring in the section must be taken to mean "the High Court". There is nothing to prevent any Judge of the High Court from dealing with the matter. The Chief Justice has jurisdiction to make the necessary order under S. 476, and when he makes it in the exercise of ordinary original jurisdiction, it is perfectly legal and cannot be questioned as being without jurisdiction: I.L.R. (1937) M. 612: (1937) 1 M.L.J. 396. A Court which is abolished but revived some years later with its jurisdiction curtailed, is not the same Court within S. 195 and hence a sanction granted on a complaint made by the re-established Court in respect of an offence committed in respect of proceedings before the old Court is without jurisdiction: 16 Cr.L.J. 787: 31 I.C. 643 (2); see also 14 Cr.L.J. 178: 7 P. R. (Cr.) 1913. The word 'Court' in S. 482 and also in S.195, means all the members constituting the particular Court in question and the *sir panch*, more specially when he is not even a member of any Court of the Panchayat Court Benches which are actually sitting, cannot in law represent the 'Court' for the purpose of making the complaint under S. 195 or hold an inquiry under S. 482: 1936 N. 275.

3. **Offence before arbitrator.**—Where a party to a suit in a Small Cause Court produced a document alleged to be forged before an arbitrator to whom a reference was made, and the document was used in evidence and filed with the award, held, that the sanction of the Small Cause Court was necessary for a prosecution against the party in respect of the forged document: 17 M.L.J. 420: 6 Cr.L.J. 331. A civil suit was decided between *M* and *C* after reference to arbitration. *C* then lodged a complaint charging *M* with offences under Ss. 193 and 471, Penal Code, alleged to have been committed in the proceedings before the arbitrator: Held, that sanction under this section was required before a Court could take cognizance of such a complaint: 3 P. R. 1914 (Cr.): 15 Cr. L. J. 358 following 17 M. L. J. 420; see also 58 C. 215: 1931 C. 436.

4. **Offence before Commissioner.**—Court has power to sanction prosecution for an offence before Commissioner appointed by it: 106 I.C. 109: 28 Cr.L.J. 1021.

5. Complaint must be made by Court and not by Prosecuting Inspector.—The intention of the legislature in framing S. 195 (*c*) is to give authority only to the Court in which the proceeding was pending to file a complaint in respect of documents which were produced or given in evidence before it. A prosecution, therefore, cannot proceed on a complaint filed by a Prosecuting Inspector. It is necessary for such a complaint to be lodged by the Court in which the documents had been produced: 1930 L. 225: 31 Cr.L.J. 778, relying on 1925 B. 433: 49 B. 608.

6. Complaint whether should be made by the same Judge.—See Note 6 under Heading II under S. 476.

7. What are Courts under the section—[See also Heading II under S. 476]—*Special Tribunals.*—The tribunal consituted under the Calcutta Improvement Act is a Court within S. 195 of the Cr.P.C.: 45 C. 585: 19 Cr.L.J. 315.

An Election Tribunal constituted under the Representation of the People Act has all the attributes of a Court, as appears from the persual of Ss. 90, 91 and 92 of that Act and, therefore, it is a Court within the meaning of that word in S. 195 (1) (*b*) as defined S. 195 (2): 1960 Cr.L.J. 281: A.I.R. 1960 All. 602. So also an Election Tribunal constituted under S. 22, U.P. Municipalities Act: 1962 A.L.J. 921: A.I.R. 1963 All. 395: 1963 (2) Cr.L.J. 118.

The Industrial Tribunal is not a Court within the meaning of S. 195 (1) (*b*). Even though the Industrial Disputes Act provides that for the purpose of S. 193, the proceedings before the Tribunal will be considered to be judicial, yet it does not provide that the Industrial Tribunal will be considered to be a Court within the meaning of S. 195 (1) (*b*), Cr.P.C.: 1960 Cr.L.J. 458: A.I.R. 1960 Assam 55.

High Court.—For the purpose of deciding the dispute raised by the petitioner in a petition under Art. 226 of the Constitution praying for the issue of a writ of *mandamus* against his superior Government officer, the High Court is a civil Court within the meaning of S. 479-A and a Court within the meaning of S. 195, Cr.P.C: 1960 Cr.L.J. 26: A.I.R. 1960 All. 55.

District Judge acting under S. 22, Bombay Municipal Act (III of 1901).—A District Judge determining the validity of elections under S. 22, District Municipalities Act, is a 'Court' within the meaning of Cl. (*b*) of this section: 15 Bom. L.R. 45: 37 B. 365.

Deputy Commissioner acting under Punjab Municipal Act.—A Deputy Commissioner, acting under *R.* 5 (*ii*) or *R.* 5 (*iii*) of the Rules made under S. 240 of the Punjab Municipal Act, is a Court": 62 I.C. 413: 22 Cr.L.J. 525.

Registrar of Presidency Small Cause Court.—The Registrar of the Presidency Small Cause Court is authorised to decide the question of service of summons and is entitled to take evidence. The proceedings before him in such matters are in the nature of judicial proceedings and he can valid by sanction prosecution: 16 C.W.N. 1323: 16 Cr.L.J. 151. But see the following cases.

The Registrar of a Presidency Small Cause Court cannot be deemed to be a 'Court' within the meaning of S. 195 (1) (*b*), Cr.P. Code, unless he has been in some way or other specially empowered to be a Judge. The Registrar, taking security, and in order to do so incidentally taking from a party an affidavit does not act as "a Court"; a complaint by the Registrar in respect of false statements in the affidavit, under Ss. 193 and 199, I.P. Code, is not a valid complaint under S. 195, Cr.P. Code: A.I.R. 1942 Mad. 737 (2): (1942) 2 M.L.J. 571: I.L.R. (1943) Mad. 600.

Where the Registrar of the Presidency Small Cause Court under the directions of the Chief Judge made inquiries and satisfied himself that an affidavit filed by the accused was false and thereupon filed a complaint in the Court of the Chief Presidency Magistrate. Held, that, although the Registrar is a 'Cout' for certain purposes, *e.g.*, when trying a suit for a sum of Rs. 20 or less, the Registrar was acting not as a 'Court' but as a ministerial officer in the present case and therefore the complaint was not filed by the proper person and must be returned: (1942) 1 M.L.J. 105: 1942 M. 326.

Assistant Registrar of Co-operative Societies.—The Assistant Registrar of Co-operative Societies, to whom a dispute touching a debt due to a society by a member is referred, is a Court within the meaning of S. 195, Cr.P.C.: 59 M.L.J. 229: 1930 M. 869. But see (1954) 2 M.L.J. 332 noted below.

Collector acting under Bengal Tenancy Act.—A Collector acting in appraisement proceedings, under Ss. 69 and 70 of the Bengal Tenancy Act, is a Court: 17 C. 872 (875); 45 C. 336; 48 C. 1086. See also 40 C. 465; 22 C.W.N. 166.

Collector holding investigation under S. 14, Bengal Putni Regulation (VIII of 1819).—The Collector holding summary investigation under S. 14 of the Bengal Putni Regulation (VIII of 1819) is a "Court" within the meaning of S. 195 (1) (*b*) of the Cr.P.C. He is a "Court" even if he had been acting without jurisdiction and had no authority to hold the investigation: 61 C. 792; 1934 C. 457; see also 40 C. 477: 14 Cr.L.J. 197; 59 C. 68.

Thika Controller.—The provisions of the Calcutta Thika Tenancy Act, 1949, and the rules framed thereunder indicate that the Thika Controller is a Court and not a mere Tribunal: 65 C W.N. 600.

Commissioners appointed under Public Servants (Inquiries) Act, 1850.—The Commissioners appointed under the Public Servants (Inquiries) Act, 1850, are a Court though their conclusions take the form of advice to superior authority: 12 L. 391: 1931 L. 662.

Income-tax officer.—Prior to the enachment of S. 37 (4) of the Income-tax Act, 1922, by Act XVIII of 1956, there was a conflict of judicial opinion on the question whether an Income-tax Officer was or was not a Court. It was held in some cases that he was not a Court within the meaning of S. 195 as his duties when making an assessment were realy administrative in character and not judicial—See (1954) 2 M.L.J. 332; A.I.R. 1954 Mad. 822. See also A.I.R. 1954 Mad. 806 where it was held that an Appellate Income-tax Tribunal was not a Court. It was held that the the Income-tax Officer requiring income-tax practitioners to furnish evidence of their eligibility to practise under S. 61 of the Income-tax Act, did not act as a Court but only administratively—See A.I.R. 1960 Madh. Pra. 269. But in some cases it was held that the Income-tax Officer was a Revenue Court within the meaning of that word as used in S. 195 (1) (*b*) and (*c*)—See 38 Bom. 642 (F.B.); 8 Rang. 25: 1930 R. 201; 20 N.L.J. 214. Relying on the decision of the Full Bench in 38 Bom. 642, it was held by the Bombay High Court that an Income-tax Officer, while holding proceedings under S. 23 of the Income-tax Act, 1922, was a revenue Court within the meaning of S. 195 (1) (*b*): 64 Bom. L.R. 348: A.I.R. 1963 Bom. 70. This decision was affirmed by the Supreme Court on a different ground by a majority of three to two in (1964) 1 S.C.J. 541: A.I.R. 1964 S.C. 1184: 1964 (2) Cr.L.J. 249. The majority view is expressed as follows:—It could not have been the intention of the legislature in making the offence committed during the course of a proceeding before an Income-tax Officer more serious without affording a corresponding safeguard provided by S. 195 (1) (*b*), Cr. P. Code, in respect of the complaints which can be made in that behalf. Section 37 (4) of the Act makes the proceedings before the Income-tax Officer judicial proceeding under S. 193, I.P. Code and these judicial proceedings must be treated as proceedings in any Court for the purpose of S. 195 (1) (*b*), Cr.P. Code. That would really carry out the intention of the legislature in enacting S. 37 (4) of the Act. Where, therefore, an offence under S. 193, I.P. Code, is committed in respect of the proceedings before the Income-tax Officer, complaint by that Officer is a condition precedent prescribed under S. 195 (1) (*b*), Cr.P. Code, before a Magistrate can take its cognizance. The dissenting Judges have held that the words used in S. 37 (4) of the Income-tax Act furnish no reason to alter the legal position that is inescapable on a consideration of the functions of the Income-tax Officer that he is not a Court within the meaning of S. 195 of the Code of Criminal Procedure.

S. 136 of the Income-tax Act (XLIII of 1961), which corresponds to S. 37 (4) of the old Act, states that any proceeding under that Act before an Income-tax authority shall be deemed to be a judicial proceeding within the meaning of Ss. 193 and 228 and for the purposes of S. 196, I.P.C.

Tahsildar acting under Act (III of 1869).—A Tashildar holding an enquiry as to whether a transfer of names in a land register should be made or not, is a Court, as he is authorised under Act III of 1869 (Madras), to receive evidence and decide whether the transfer should be made or not: 2 Weir 170: 24 M. 121 (123).

Deputy Tashildar.—Where the applicants for a transfer of patta produce as genuine a forged will, before the Deputy Tahsildar in the course of the enquiry held by him, they can be prosecuted

under S. 471, I.P.C., only with the sanction of the Deputy Tashildar: 16 L.W. 534; see also 923 M. 87: 24 Cr.L.J. 15.

Mukhtiarkar holding enquiry in mutation proceedings.—A mukhtiarkar holding an enquiry in mutation proceedings is a Revenue Court within the meaning of S. 195 (1) (*c*), Cr.P.C., though his proceedings are not judicial proceeding within the meaning of S. 196, Bombay Land Revenue Code: I.L.R. (1940) Kar. 435: 1940 S. 100.

Mamlatdar holding inquiry into record of right—A Mamlatdar holding an enquiry relating to record of rights, under Chapter XII of the Land Revenue Code, (Bombay Act V of 1879), is a Revenue Court within the meaning of Cl. (1) (*c*) of this section: 39 B. 310; see also 5 B. 137; 0 B. 756: 1936 B. 221; Rat. 149. *Cf.* 9 Bom. L.R. 896: 6 Cr.L.J. 225. see also Notes under Heading II under S. 476.

Village Munsif acting under Act (IV of 1816).—A Village Munsiff trying a case under Regulation IV of 1816, is a Court: 11 M. 375: 2 Weir 163; 2 Weir 1.

Debt Conciliation Board.—Under S. 24-A, C.P. Debt Conciliation Act, the proceedings under he Act are judicial proceedings; therefore the Debt Conciliation Board must be deemed to be a Court. The expression "Court" in S. 195, Criminal Procedure Code, is of wide scope and ncludes more than the expression "Civil, Criminal or Revenue Court" in S. 476, Cr.P. Code and he Board is, therefore, a Court as contemplated by S. 195, Cr.P. Code, and is competent to pass rders under that section: 1940 N.L.J. 23: 1940 N. 184. But it is neither a Civil Court nor a Revenue Court and therefore the provision regarding appeal does not apply to an order passed by he Board under S. 195. *Ibid.*

8. What are not Courts under the section—[See also Heading II under S. 474]—*Collector in administrative capacity.*—S. 195 has no application to a matter coming before a Collector in his dministrative capacity. Proceedings against a patwari for giving a false age in a certificate filed efore the Collector do not require sanction under S. 195: 13 S.L.R. 159: 53 I.C. 722.

Collector acting in stamp proceedings.—A Collector, to whom an application is made for the enewal of a spoilt stamp, is not a Court: 3 P.L.R. (Cr.) 6: 11 W.R. (Cr.) 48.

Land Acquisition Collector.—The Land Acquisition Collector is not a Court within S. 195. His function really is to ascertain on behalf of the Government what is the value of the property which the Government proposes to acquire and to make an offer to the party: 31 C.W.N. 25: 1927 Cal. 621; see also 27 C. 820; 30 C. 36.

Certificate officer under Public Demands Recovery Act.—A mahal belonging to several co-harers was sold under the Bihar and Orissa Public Demands Recovery Act, 1914. The proceeds f the sale after paying out the claim of the certificate holder remained in the hand of the ertificate officer. A Muktyar filed an application purporting to be signed by all the co-sharers nd drew out the money from Court. Some of the co-sharers applied for sanction to prosecute he muktyar for forgery, held, that the surplus sale proceeds were not entrusted to the certificate fficer in his capacity as a Court and the sanction for the prosecution of the muktyar was not ecessary: 2 P. 257.

Tahsildar functioning under Madras Cultivating Tenants Protection Act, 1955.—A Tahsildar hile functioning for the purposes of S. 3-A of the Madras Cultivating Tenants Protection Act, 955, inserted by Mysore Act (XV of 1957), cannot be said to function as a Court: A.I.R. 1963 Mys. 153: (1963) M.L.J. (Cri.) 352.

Naib Tahsildar.—Under S. 195, sub-S. (1) (*c*) read with S. 195, sub-S. (2), the previous nction of the Naib Tahsildar is not essential to the institution of criminal proceedings against he petitioner under Ss. 465, 468 and 471, I.P.C., when the alleged offence was committed in roceedings before the Naib Tahsildar acting in his administrative capacity of a 'revenue-officer', nd not in his judicial capacity as a 'revenue Court': 18 P.R. 1915 (Cr.): 16 Cr L.J. 75 distinuishing 24 M. 121.

Excise Collector is not a Court: 3 Cr.L.J. 196.

Registrar and Sub-Registrar.—The intention of the legislature in enacting in sub-S. (2) in e present Code is to leave all false statements made before a Registrar or Sub-Registrar in the

course of any proceeding under Act III of 1877 to be dealt with as offences under S. 82 of that Act: 11 O.C. 358; see also 11 C.L.J. 121: 5 I.C. 721. Under the old Codes the decisions were conflicting as to whether Registrars and Sub-Registrars were Courts within the meaning of the section. This conflict has been set at rest by this sub-section. A Registrar is not a Court though he may institute a prosecution for an offence under the Registration Act: 11 O.C. 358. See also 11 M. 500.

Deputy Registrar of Co-operative Societies.—A Deputy Registrar of Co-operative Societies is not a Court within the meaning of S. 195: (1954) 2 M.L.J. 332: A.I.R. 1954 Mad. 822. But see 59 M.L.J. 229 noted above.

Sales-Tax Officer.—A Sales-Tax Officer is not a 'Court' within the meaning of S. 195 (2). No doubt Sales-Tax Officers have certain powers which are similar to the powers exercised by Courts but still they are not Courts. Merely because certain instrumentalities of State employed for the purpose of taxation have, in the discharge of their duties, to perform certain quasi-judicial functions they are not converted into Courts thereby: A.I.R. 1963 S.C. 416: 1963 (1) Cr.L.J. 330. The decisions to the contrary in A.I.R. 1956 Bom. 230 and 326 cannot be considered good law in view of the above ruling of the Supreme Court.

Police patel.—A false statement made on oath before a police patel is punishable under S. 193, I.P.C. But a police patel is not a criminal Court within the meaning of this Code, and no sanction is necessary to prosecute a person for giving false evidence before him: 4 B. 479 (481).

Police-officer acting under Section 161.—A police-officer examining a person under S. 161, *supra*, in the course of an investigation, is not a Court: 11 B. 659.

Commissioner appointed under Section 503.—A Commissioner for the examination of a witnes appointed under S. 503, *infra*, is not a Court. The word "Court" in this section means the Court whose duty it is to consider evidence and to decide whether it is true or false: 11 C.W.N. 909: 6 Cr.L.J. 160.

Official Assignee.—The Official Assignee, while convening and conducting a meeting of creditors for the consideration of a proposal for a composition or scheme under S. 28 of the Presidency Towns Insolvency Act, discharges a purely administrative function, and in accepting or rejecting the proof of debt for the purposes of S. 28 (2) he discharges his function as the chairman of the meeting. He is, therefore, not a Court within the meaning of S. 195 (1) (*b*), Cr.P. Code. But the proceeding before the Official Assignee for a composition or scheme is one in relation to the original insolvency proceeding, which is a proceeding in a Court. It follows, therefore, that an offence under S. 200 read with S. 199, I.P. Code, alleged to have been committed by the insolvent in such a proceeding must be taken as "alleged to have been committed in relation to a proceeding in a Court" within the meaning of S. 195 (1) (*b*), Cr.P. Code and consequently in the absence of any complaint in writing of the Insolvency Court, the Magistrate is debarred from taking cognizance of the same: I.L.R. (1942) 1 Cal. 278: 1942 C. 79. Where the accused produced a forged document before the Official Assignee in support of a claim, it is the sanction of the Insolvency Commissioner which is required for the prosecution of the accused on a charge of using a forged document as genuine, and the sanction of the Official Assignee is not enough. The Official Assignee does not become a civil Court merely because he has a wide discretion in deciding on claims of persons, alleging themselves to be the creditors of the insolvent, or because persons aggrieved by his orders have a right of appeal to the Court. The order of adjudication does not transfer the proceeding from the Court to the Official Assignee: 37 M. 107. The High Court can in its insolvency jurisdiction sanction prosecution of a claimant for false statements in an affidavit, filed before Official Assignee empowered to investigate such claims. The claimant is a party to the proceedings within S. 195 (1) (*c*): 36 M.L.J. 60: 20 Cr.L.J. 193.

Election Commissioner.—See Heading II under S. 476, *infra*.

Chairman of Municipality scrutinizing nomination paper under Rules under Bengal Municipal Act.—The Chairman of a Municipality scrutinizing a nomination paper under R. 17 (4) of the Rules under the Bengal Municipal Act and rejecting it, and the District Magistrate who hears an appeal from his decision under R. 20, are not Courts within the meaning of Ss. 195 (1) (*c*) and 476, Cr.P. Code. Consequently a complaint by either of them is not necessary for a prosecution under

471, I.P. Code, for filing a forged nomination paper: I.L.R. (1944) 1 Cal. 192: A.I.R. 1943 al. 574.

Debt Settlement Boards constituted under Bengal Agricultural Debtors Act.—Debt Settlement oards constituted under the Bengal Agricultural Debtors Act are merely agents of the Local overnment vested with certain legal powers for a definite purpose and are not "Courts" within e meaning of S. 195, Criminal Procedure Code: I.L.R. (1940) 2 Cal. 14: 1940 Cal. 286.

Appellate officer under Bengal Agricultural Debtors Act.—An appellate Officer set up under 40 of the Bengal Agricultural Debtors Act has functions similar to those of Debt Settlement oards, and is not a "Court" as defined in S. 195, Cr.P. Code: I.L.R. (1940) 2 Cal. 158: 1940 al. 454.

Conciliation officer functioning under Industrial Disputes Act is not a Court—See 1964 ur.L.J. 109 (Punj.).

Governor-in-Council disposing of appeal in case relating to Forest Department.—The Governor-Council of Assam or a member of his Council disposing of appeal in a case relating to the orest Department is not a Court. Though the member might have followed judicial procedure, did not possess the ordinary powers of a Court in the matter of issuing process and compelling e attendance of witnesses. S. 195 (1) (*c*) is inapplicable to him: 59 C. 1233 (1240): 1932 C. 390.

VI. SUB-SECTION (3)—SUBORDINATION OF COURTS.

Synopsis.

1. Legislative changes.
2. Subordination of Courts—Test.
3. "Court to which appeals ordinarily lie"—Construction.
4. Determination of superior Court is not confined to decrees which are appealable.
5. Proviso (*a*).
6. High Court.
7. District Judge.
8. Judge of Provincial Small Cause Court.
9. Judge of Presidency Small Cause Court.
10. District Munsif.
11. Subordinate Judge.
12. Appeal from order of Subordinate Judge lies to District Judge and not to Sessions Judge.
13. Subordinate Judge acting as Election Commissioner.
14. Special Judge acting under U.P. Encumbered Estates Act.
14-A. Assistant Civil Judge.
15. Collector.
16. Assistant Collector.
17. Panchayat Court.
18. Village Munsif.
19. Mamlatdar's Court.
20. Commissioner of Santhal Parganas.
20-A. Claims Commissioner under Railways Act.
21. Subordinate Magistrates.
22. District Magistrate.
23. Assistant Sessions Judge.
24. Proviso (*b*).

---

1. **Legislative changes.**—The corresponding portion of the Code of 1882 ran thus:—"For e purposes of this section, every Court other than a Court of Small Causes, shall be deemed to subordinate to the Court to which appeals from the former Court ordinarily lie." No planation of the term "ordinarily" was vouchsafed in the Code of 1882. This produced a mass conflicting rulings about its interpretation (see 11 B. 438) holding that the words meant "in the jority of cases" Cls. (*a*) (*b*) and (*c*) were added with a view to get rid of the difficulty: see 34 A.

197, 9 A.L.J. 124; 13 Cr.L.J. 498 (500); 8 N.L.R. 57. As the drafting of the sub-section these clauses was the subject of severe criticism, it has been redrafted by the Amending A 1923. Cl. (c) has been incorporated into the body of the sub-section. Instead of the w "where no appeal lies" occurring in the old clause, the words now used are "in the of a civil Court from whose decrees no appeal ordinarily lies". So the decisions 17 Cr.L.J. 208: 1 P.L.J. 206; 34 A. 197; 9 A.L.J. 124, following 31 A. 213: 6 A 231, to the effect that the words "where no appeal lies" did not refer to Courts against decisions of which there is no appeal, but refer to particular cases in which no appeal lies, are longer law: see 45 C. 336: 22 C.W.N. 165, as to the meaning of those words. The prin Court of original jurisdiction in S. 195 does not necessarily refer to a Court of any particular It is a civil, criminal or Revenue Court as the case may be: 45 C. 336: 22 C.W.N. In Burma, the District Court is the principal Court of original jurisdiction: 18 Cr.L.J. 42 I.C. 593. Election Commissioners would not be considered to be subordinate to the prin Court of ordinary original civil jurisdiction under sub-Cl. (3) because neither appeals ordin lie thereto nor are the Commissioners a civil Court: 47 A. 934: 1925 A. 737. The following decisions under the old section regarding the grant of sanction by superior Courts. The Courts that can give sanction for prosecution are those before which the alleged offence committed, or the Courts to which such Courts are subordinate: 6 C. 440: see also 17 W 54 (Cr.): (1883) A.W.N. 224; (1884) A.W.N. 276; see also 16 Cr.L.J. 640: 30 I.C. 5 A.L.J. 562: 7 Cr.L.J. 304. (Sanction by superior Court for offence different from that for w sanction was refused in lower Court). Under sub-S. (1), Cls. (*b*) and (*c*), sanction may accorded in the first instance by the Court, to which the Court, in which the offence committed, is subordinate, even though no application for sanction has been made to the l Court: 27 M. 223. But, as a general rule, application for sanction should be made in the instance to the Court before which the offence is alleged to have been committed: 1 Weir 6 M.H.C.R. 92; 56 P.R. 1905 (Cr.): 3 Cr.L.J. 121; (1883) A.W.N. 224; (1888) A.W.N. 3 C.W.N. 33: 81 P.R. 1879; 16 A. 80. Where the case has been tried in any Court other that of a District and Sessions Judge or an Additional District and Sessions Judge to whic trial Court is subordinate, sanction to prosecute under S. 195 (1) (*c*) may be granted either b trial Court or by the Court to which appeals from that Court ordinarily lie. The High Cou not empowered to do so in virtue merely of having heard the appeal: 1922 Lah. 346.

2. Subordination of Courts—Test.—In order to determine whether a particular Co subordinate to another Court within the meaning of S. 195 (3), the first question to be aske whether any decree, orders or sentences of the original Court are appealable at all. If the not, and the Court is a civil Court, then, under S. 195 (3), the appeal against the order ma or refusing to make a complaint will be to the principal Court of ordinary original jurisdiction. In determining the Court or Courts to which an appeal will ordinarily lie, it h be seen which Court or Courts entertain appeals from that class of tribunal in the ordinary apart from special notifications or laws that lift the matter out of the general class. A.I.R. Sind 163, Not approved. It would be wrong to say that the nature of the proceedings case must be wholly ignored because of sub-clause (*b*) to the proviso to S. 195 (3). There to that limited extent the nature of the proceedings must be taken into account, but once the of the proceedings is determined, namely whether civil, criminal or revenue, the hierarchy o superior Courts for these purposes will be determined, first by the rules that apply in their s cases and next by the rule in S. 195 (3): 1956 S.C.J. 387: 1956 S.C.R. 125: A.I.R. 1956 S.C

3. "Court to which appeals ordinarily lie"—Construction.—In determining the Court or C to which an appeal will ordinarily lie, it has to be seen which Court or Courts entertain a from that class of tribunal in the ordinary way apart from special notifications or laws th the matter out of the general class: 1956 S.C.J. 387: A.I.R. 1956 S.C. 391: 1956 Cr.L.J disapproving A.I.R. 1931 Sind 163 which held that "ordinarily" meant "in the majority of and that it had no reference to the particular case in hand.

The words "Court to which appeals ordinarily lie" in S. 195 (3), do not mean Co which appeals are ordinarily heard. Consequently it is the Court of the District Magistrate not that of the Additional District Magistrate that can make a complaint under S. 476-A, Cr although appeals from orders of the second or third class Magistrates are ordinarily heard b

Additional District Magistrate: I.L.R. (1938) L. 188: 1938 L. 641, See also 18 P.L.T. 91: A.I.R. 1937 Pat. 176, cited in Note 21 below.

4. **Determination of superior Court is not confined to decrees which are appealable.**—The determination of the superior Court is not confined to the decrees which are appealable. What is stated is that a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees: 1930 A.L.J. 1010: 1930 All. 407.

5. **Proviso (a).**—This proviso is added in the present Code with a view to avoid the difficulty which Courts experienced in interpreting the words to "which appeals ordinary lie". In 11 B. 438, those words were held to mean 'in the majority of cases'. A party could not be expected to take statistics for finding out to which Court appeals lie in the majority of cases: see 13 Cr.L.J. 498 (500): N.L.R. 57. The present clause avoids the difficulty by enacting that the Appellate Court of inferior jurisdiction shall be the Court to which the Court shall be deemed to be subordinate. When, therefore, appeals from a Court of Subordinate Judge lies both to the District Judge and to the Senior Subordinate Judge, the Court of the Subordinate Judge is subordinate to the Senior Subordinate Judge for the purposes of this section: 42 P.L.R. 23.

6. **High Court**—*Division Bench of High Court.*—A Division Bench of High Court is a Court subordinate to the Supreme Court—See Note 15 under S. 476-B post.

Single Judge of High Court—As to whether a single Judge of the High Court is subordinate to a Bench of the High Court, see 22 C. 487; 47 B. 270; 44 C. 816; 45 M. 928; 56 C. 932; (1943) 2 M.L.J. 668: 1944 M. 181; 12 M.L.J. 408; 5 Cr.L.J. 288. See Note 14 under S. 476-B.

7. **District Judge.**—A District Judge is subordinate to the High Court: 29 M. 122; 1923 R. 12.

8. **Judge of Provincial Small Cause Court.**—It was held under the old section that a District Court and not the High Court was the proper Court to review the order of a Provincial Small Cause Court granting or refusing sanction passed under S. 195 of the Cr.P.C.: 4 P.L.J. 609:20 Cr.L.J. 577 (F.B.);39 A. 657: 15 A.L.J. 721 (F.B.). For the purposes of the section, a Provincial Small Cause Court is subordinate to the District Court: 21 C.W.N. 948: 18 Cr.L.J. 791: A.I.R. 1937 R. 526; 2 P.L.J. 1: 18 Cr.L.J. 370 (deciding that Small Cause Court is itself a principal Court of original jurisdiction with regard to suits cognizable only by such Court) seems to be incorrect. A District Munsif acting as Small Cause Judge is "subordinate" to the District Judge: 18 Cr.L.J. 6: 36 I.C 878; see also 1935 A.L.J. 476: 1935 All. 446 (2). Under S. 195 (3), in the case of a Civil Court from whose decree no appeal ordinarily lies, that Court should be considered to be subordinate to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such civil Court is situate. The Court of Small Causes is such a Court and so it is subordinate only to the Court of the District Judge. An appeal from a complaint made from a Judge of that Court who describes himself as a Munsif because he was a Munsif invested with small cause powers, lies to the District Judge and not to the Court of the Subordinate Judge even though as Munsif, his decrees are ordinarily appealable to the latter Court: 1925 O. 713: 27 Cr.L.J. 83.

Under S. 476-B read with S. 195 (3), an appeal against an order passed by the Court of Small Causes, refusing to make a complaint under S. 476 would lie to the principal Court of ordinary original civil jurisdiction where the Court of Small Causes is situated, *viz.*, the Court of District Judge, Gwalior and not the High Court of Madya Bharat: 1956 Madh. B.L.J. 1132: 1957 Cr.L.J. 98.

An appeal lies to the District Judge against an order of the Subordinate Judge exercising powers of a Judge of Small Causes Court initiating proceedings: 6 O.W.N. 848: 1929 O. 515. See also 20 O.C. 223: 18 Cr.L.J. 899.

An appeal from an order of the Court of Small Causes, Saugor, under S. 476, lies to the Additional District Judge, Saugor, and not to the District Judge, Jubbulpore. The Additional District Judge sitting at Saugor, determines all matters arising from the Saugor Revenue District and there is no limitation either by general or special orders of the Local Government or by any particular order of the District Judge, which debars the Additional District Judge from hearing an appeal under S. 476 coming before him, in the ordinary course of the distribution of the business: N.L.R. 90: 1934 N. 236.

9. Judge of Presidency Small Cause Court.—As to whether a Small Cause Court is subordinate to the High Court: see 13 C.W.N. 1038. The Presidency Small Cause Court is no part or branch of the High Court, but is an inferior subordinate Court and in dealing with its judgments and orders, the High Court exercises not an original but appellate or revisional jurisdiction: 21 C.W.N. 654: 18 Cr.L.J. 793; see also 36 M. 138: 21 M.L.J. 1074; 43 C. 587: 17 Cr.L.J. 504. A Bench constituted by the Chief Justice to deal with orders and judgments of the Presidency Small Cause Court, forms a principal Court of original jurisdiction situate in Calcutta: 21 C.W.N. 654: 18 Cr.L.J. 793. An appeal against an order of a Judge of the Presidency Small Cause Court directing a prosecution under S. 476, Cr.P.C., lies only to the appellate side of the High Court and not to the Full Bench of the Small Cause Court under S. 38 of the Presidency of Small Cause Courts Act or to the original side of the High Court: 48 M. 395 following 34 B. 316, and explaining 45 M. 928 (F.B.).

10. District Munsif.—A Munsif is subordinate to a Sub-Judge if appeals are prefereed directly to the Court of the latter from that of the former and if the appeals ordinarily lie, to the Sub-Judge's Court: 40 A. 21: 15 A.L.J. 844. For the purposes of S. 195, Cr.P.C., a Munsif is subordinate to the Senior Subordinate Judge and not to the District Judge. The latter is not competent to direct prosecution for an offence committed before the Munsif: 69 I.C. 448: 23 Cr.L.J. 720; 2 L. 57; 91 I.C. 251: 27 Cr.L.J. 75. The Madras Government had, by a notification issued under the Madras Civil Courts Act, empowered Subordinate Judges to receive appeals direct in all cases where the Sub-Court is situated in a place different from that of the District Court. All the Subordinate Judges, who have been empowered by such notification to entertain civil appeals, will be Courts to which appeals 'ordinarily lie' from orders passed by the District Munsiffs under this section: 28 M.L.J. 486: 16 Cr.L.J. 439: 29 I.C. 71; see also 8 P. 428.

But see *infra*. The Court of the District Judge is the only Court to which that of the Munsif is subordinate within the meaning of S. 195 (3): 14 P.L.T. 131: 1933 Pat. 179 (2); A.I.R. 1950 Pat. 567: 51 Cr.L.J. 1568 (Munsif not subordinate to Additional District Judge). The Subordinate Judge, not being the Court to whom appeals from orders of the Munsif ordinarily lie, he has no power *suo motu* to make a complaint under S. 476-A, on an appeal from the order of the Munsif transferred to him by the District Judge: 15 P.L.T. 303: 1934 P. 366. Ordinarily in United Provinces under S. 21 (2) of Bengal, Agra and Assam Civil Courts Act, appeals from the judgments of Munsifs lie to the Court of the District Judge. Hence an appeal under S. 476-B, Cr.P. Code, against an order of a Munsif under S. 476 lies only to District Judge's Court to which the Court of the Munsif is subordinate. A Civil Judge cannot entertain such an appeal even though such appeals are filed before him by virtue of a local order: 1943 A.L.W. 488.

11. Subordinate Judge.—Appeals from a Sub-Court must be regarded as ordinarly lying to the District Court and not to the High Court within the meaning of S.195: 44 M.L.J. 320: 24 Cr.L.J. 337; see also 21 C.W.N. 755: 18 Cr.L.J. 735. This is so, even though the Subordinate Judge's order was itself passed in the exercise of his appellate jurisdiction. *Ibid.* The section only refers to the Courts and makes no distinction between appellate and original jurisdictioh. An appeal lies, therefore, from orders passed by Subordinate Judges under S. 195, whether in the exercise of the original or appellate jurisdiction, to the District Court and not to the High Court: 19 Cr. L.J. 264 : 44 I.C. 120. Nor does tho section make any distinction between suits of the value of over R. 5,000 and suits of the value of less than Rs. 5,000, though an appeal has to be filed in the High Court against the decision in the former class of suits. It was held that where an application for sanction to prosecute for an offence committed in a suit of the value of over Rs. 5,000 on the file of the Subordinate Judge, was refused the appeal lay to the District Court and not to the High Court: 99 I.C, 957 : 1927 M. 683; 17 A. 51; see also 1933 M.W.N. 1280; A.I.R. 1955 Mys. 59. The Court of the Sub-Judge is a Court from whose orders appeals ordinarily lie to two Courts, that of the District Judge and the High Court. The Appellate Court of inferior jurisdiction, namely the District Judge's Court, is the Court to which the Court of the Subordinate Judge must be deemed to be subordinate within the meaning of S. 195 (3). The appeal, therefore, under S. 476-B lies to the District Judge. That was the position under the Code as it stood before the amendments made in 1923; and the amendments introduced in that year have not changed the law in this respect: 17 P.L.T. 66:1936 Pat. 122, followed in A.I.R. 1955 Mys. 59. An appeal against the rejection of an application under S. 476-A by a Civil Judge lies to the District

Court, and not to the High Court, for, though appeals from the Civil Judge at Mirzapur lie both he District Court and the High Court according to the valuation yet by reason of S.195 (3), priviso a), it is the District Court that must be deemed to be the Court to which the Court of the Civil udge is subordinate: 1938 A.L.J. 1196 : A.I.R. 1939 All. 79. An appeal from an order made y a Subordinate Jude under S. 476, Cr.P. Code, arising from proceedings under the Guardians nd Wards Act, lies to the District Court and not to the Chief Court. Although appeals under . 47 of that Act from orders passed by him lie not to the District Court but to the Chief Court, he Court to which appeals ordinarily lie from appealable decrees passed by him is not the Chief Court, but the District Court: I.L.R. (1942) Kar. 64 : 1942 S. 98. Under S. 39 of the Punjab Courts Act, 1918, appeals ordinarily lie from the Court of Subordinate Judge either to the District Court or the High Court and as the District Court is the lower of these two tribunals the Court of he Subordinate Judge should be deemed to be subordinate to that Court. The Notification issued y the High Court under S. 39 (3) of the Act providing that appeals lying to the District Court n a certain specified class of cases should be preferred to a particular Senior Subordinate Judge, onfers a special appellate jurisdiction on him. It is not the ordinary jurisdiction of the Senior ubordinate Judge but an additional power which can only be exercised in a certain limited class. herefore it cannot be said that appeals from the Courts of Subordinate Judges "ordinarily" lie o the Senior Subordinate Judge: 1956 S.C.J. 387 : A.I.R. 1956 S.C. 391 : 1956 Cr.L.J. 781 (786).

The power of the Appellate Court in sanctioning a prosecution is not only restricted to cases which an appeal is heard but vested in it, as a superior Court exercising supervision and control ver Subordinate Courts, and may be exercised on perusal of a record sent for by it, although no arty may have appealed to it. This, however, does not imply that the High Court has no juris-ction to interfere if appealed to, but it will not do so, unless it be in very exceptional circum-ances: 25 S.L.R. 196 : 1931 S. 163.

An additional District Judge is not a Court to which appeals ordinarily lie from the Court of ubordinate Judge and the Subordinate Judge is therefore not subordinate to the Additional istrict Judge but only to the District Judge. An additional District Judge is not therefore com-tent to file a complaint under S. 476-A, Cr.P. Code, in respect of proceedings in the Court of ubordinate Judge: 23 P. L. T. 235 : 1941 Pat. 592; 24 Pat. 1 : 1945 Pat. 322. See also A.I.R. 56 S.C. 391.

12. Appeal from order of Subordinate Judge lies to District Judge and not to Sessions dge.—A civil Court acting under S. 476, Cr.P. Code, is not a criminal Court. Though an peal against an order under S. 476, Cr.P. Code, is allowed under the very Code under S. 476-B, t it does not take away the jurisdiction, of the Civil Appellate Court to which the Civil Judge o passes the order is subordinate. Therefore, an appeal against the order passed under S. 476, .P. Code, by a Munsiff or a Subordinate Judge will lie to the District Judge to whom these urts are subodinate and such appeals are to be heard by the appellate Court exercising civil isdiction. Thus, the Court of Subordinate Judge is not a Court subordinate to the Court of ssion, and the appeal itself being incompetent any order passed by the Sessions Judge in such appeal is without jurisdiction and hence *ultra vires* and illegal:' A.I.R. 1955 Mys. 59.

13. Subordinate Judge acting an Election Commissioner.—Where, in the course of an quiry befere the Court of a Subordinate Judge acting as Election Commissioner forged docu-nts are alleged to have been made, the power which the Subordinate Judge, as Election mmissioner, can exercise, are exercisable, after his Court is abolished; by the Court to which was subordinate within the meaning of S. 195 (3), *i. e.*, by the District Judge as the principal urt having ordinary civil jurisdiction within the local limits of whose jurisdiction the Election urt is situate. It is therefore open of the District Judge in that capacity and does not as Election mmissioner to file a complaint in respect of the offence alleged. An order by the District Judge using to file a complaint is appealable under Ss. 195 (3) and 476-B to the High Court: 58 M. : 69 M.L.J. 589 : 1935 M. 673.

14. Special Judge acting under U.P. Encumbered Estates Act.—Where a Special Judge ng under the U.P. Encumbered Estates Act makes a complaint under S. 476, Cr.P.C., the eal against that order lies according to S. 476-B to the District Judge and not to the High urt. The order is merely one under S. 476 and the forum of appeal has to be decided

according to S. 476-B read with S. 195. The Judge was not passing any order under the Encumbered Estates Act, in which case alone the appeal will lie to the High Court: I.L.R. (1939) All. 975 : 1940 A. 7.

14-A. Assistant City Civil Judge.—An Assistant City Civil Judge, Madras, should be deemed to be subordinate to the Principal City Civil Judge within the meaning of S. 476-B, Cr.P. Code: (1961) 1 M. L. J. 295: 1961 (1) Cr.L.J. 826.

15. Collector.—A Collector acting under Ss. 69 and 70 of the B.T. Act is a Court within S. 195, and is subordinate to the District Judge for the purposes of the section: 45 C. 336 : 22 C.W.N. 165; see also 31 A. 313 : 9 Cr.L.J. 504; 19 A. 121 : (1897) A.W.N. 2. It was held under the old section that a sanction for prosecution granted by a Collector in a suit from which there is no appeal, can be revoked by the District Judge, as he is the principal Court of original jurisdiction: 31 A. 313. A Collector refusing to revoke a sanction granted by an Assistant Collector, for prosecution for perjury in a rent suit under the N.-W.P. Rent Act, is subordinate to the District Judge: 1889 A.W.N. 206; see also 10 A. 582: but see 1895 A.W.N. 121. In matters relating to cases of arrears of rent, appeals from the Collector's decrees lie to the civil Court, and therefore, under S. 476-B, Cr.P. Code, the Collector is subordinate to the District Judge, when a complaint is filed by the Collector in such a suit, whether the actual decree in the suit be appealable or not. An appellate decree of the Collector is never appealable to a superior revenue Court, but is appealable only to the District Judge in certain specified cases: 1934 A. L. J. 867 : 1934 A. 886.

16. Assistant Collector.—An Assistant Collector is not subordinate to District Magistrate: 6 A. 98 : 19 A. 121.

17. Panchayat Court.—A panchayat exercising jurisdiction in civil matters is a civil Court and is subject to the jurisdiction of the District Judge who is exercising principal civil jurisdiction. To such a case S. 195 (3) applies. Where in respect of a false statement made before it the panchayat made a report to the Collector who thereupon launched a prosecution, Held that the complaint of the Collector could be entertained: 52 A. 1018 : 1931 A. 141; see also 1934 A.L.J. 339 : 1934 A. 216. The District Court in North Arcot District is the civil Court to which the Panchayat Court is subordinate and so the District Munsif cannot direct a complaint to be filed against a member of the Panchayat Court: 1933 M.W.N. 1423. It is either the Panchayat Court of Sessions Judge which can prefer a complaint in respect of offences under Ss. 467 and 471, I.P. Code, committed with reference to proceedings before a Panchayat Court. The District Magistrate is not competent to make the complaint in such a case: 1942 O.W.N. 392 : A.I.R. 1942 Oudh 439.

As no appeal lies under the Madras Village Courts Act from an order or decree passed by a Village Court, such Court is subordinate to the District Court, and not to the District Munsiff, under S. 195 (3), Cr.P.Code. See (1943) 1 M.L.J. 233 : 1943 M. 419, affirming (1942) 1 M.L.J. 436 : 1942 M. 471.

18. Village Munsif.—A village Munsif is subordinate to the District Judge: 10 Cr.L.J. 437: 6 A.L.J. 796.

19. Mamlatdar's Court.—A District Court has authority to direct the prosecution for an offence under Ss. 467 and 471, I.P.C., alleged to have been committed in a suit before a Mamlatdar under the Mamlatdar's Court Act: 5 Bom.L.R. 206 (207). An appeal from Mamlatdar's Court refusing to launch a prosecution of a person, for giving false evidence in a possessory suit under the Mamlatdar's Courts Act, lies to the District Court: 9 Bom.L.R. 896 (897): 6 Cr.L.J. 225; *cf.*, Rat. 118; 5 B. 137; 14 Cr.L.J. 80: 15 Bom. L. R. 53; 9 B.H.C.R. 249 (252-253).

20. Commissioner of Santhal Parganas.—The Court of the Commissioner Santhal Parganas is subordinate to the Court of the Commissioner of Bhagalpur: 30 C. 916.

20-A.— Claims Commissioner under Railways Act.—No appeal lies against the decision of the Claims Commissioner, appointed by the Government under the provisions of the Railways Act, awarding compensation so that the order made by the Claims Commissioner even if regarded as a

civil Court is not appealable and the High Court is not a Court of original civil jurisdiction. It is not competent for the High Court to make a complaint in respect of the offence under Ss. 420 and 193, I.P.C., alleged to have been committed in or in the course of the proceedings before the Railway Claims Commissioner: (1959) 1 An. W.R. 377: 1959 Cri.L.J. 558: A.I.R. 1959 Andh. Pra. 235:

21. Subordinate Magistrates.—*A Magistrate of the second or third class.*—Before the deletion of S. 407 by Act (XXVI of 1955), it was held that the Court of a second class Magistrate was subordinate only to the District Magistrate, to whom appeals ordinarily lay under that section: 3 N.L.R. 50 (51). So also the third class Magistrate: 30 A. 109: 4 A.L.J. 805. See also 1925 A. 410: 26 Cr.L.J. 566 (District Magistrate might complain when subordinate Court had second or third class powers). A Sub-Magistrate was " subordinate " to the District Magistrate and not to a Joint Magistrate who heard appeals from orders of Sub-Magistrates only in such cases as were made over to him by the District Magistrate: 41 M. 787: 34 M.L.J. 404, following 26 M. 656. The Additional District Magistrate had no jurisdiction to entertain an appeal from an order of Sub-Magistrate preferring a complaint under S. 476 because the Court to which appeals ordinarily lay was that of the District Magistrate: 1931 M.W.N. 1194. A second class Magitsrate could not be deemed to be subordinate to the Additional District Magistrate as appeals from his Court did not ordinarily lie to the Additional District Magistrate, but to the District Magistrate: 18 P.L.T. 91: 1937 P. 176. A Magistrate specially authorised to hear appeals under S. 407 (2), Cr. P. Code, was not a Court to which an appeal ordinarily lay for purposes of S. 195: 2 L.L.J. 660: 23 Cr.L.J. 572, following 30 C. 394; 3 N.L.R. 50; 30 C. 394: 7 C.W.N. 114: see also 27 M. 124 (126); 26 M. 656: 2 Weir 202 (F.B.) and the observations of Sadasiva Aiyar, J., in 26 M.L.J. 511: 15 Cr.L.J. 409 on the decision in 2 Weir 202; see also 1929 C. 172: 56 C. 824. But where by notification, the High Court acting under S. 21 of the Bengal, Agra and Assam Civil Court's Act, 1887, directed that appeals lying to the District Judge should be preferred to the Court of the Subordinate Judge, it was held that the latter Court was " the Court to which appeals ordinarily lie " within the meaning of S. 195 (3): 8 P. 428. Under S. 408 as now amended by Act (XXVI of 1955), appeals against convictions by Magistrates of the second and third class lie to the Court of Session and not to the District Magistrate, and, therefore, such Magistrates should be deemed to be subordinate to the former and not to the latter.

Executive Magistrates.—By virtue of S. 195 (3), even Executive Magistrates are deemed to be subordinate to the Court of Session. An appeal will therefore lie under S. 476-B to the Court of Sessions, against an order passed by an Executive Magistrate under S. 476: 30 Cut.L.T. 356.

First Class Magistrate.—As appeals from the Court of a first class Magistrate lie to the Sessions Court under S. 408, *infra*, and not to the Court of the District Magistrate, a first class Magistrate is not subordinate to a District Magistrate. Under the old Code it was otherwise: see B. 384; 2 A. 205; 75 I.C. 289: 24 Cr.L.J. 913; 19 A. 121: 17 A.W.N. (1897) 2. Consequently, the District Magistrate has no jurisdiction to direct the prosecution of a complainant in respect of complaint, which has been finally disposed of by another Magistrate of the first class: 12 Cr.L.J. 39: 2 P.R. 1912 (Cr.), following 4 C.W.N. 305; 16 Cr.L.J. 640: 30 I.C. 464. A Sessions Judge and not a District Magistrate may complain, when a subordinate Magistrate has first class powers: 1925 A. 667: 26 Cr.L.J. 923. See also 1934 Oudh 344 (2). It was held under this section before its amendment in 1923 that a District Magistrate had no jurisdiction to entertain an application for sanction refused by a first class Magistrate: 5 A.L.J. 562: 7 Cr.L.J. 304; see also P.R. 1902 (Cr.): 44 P.L.R. 1902 overruling 30 P.R. 1901; Rat. 511; see also 47 B. 102: 75 I.C. 89; 42 M. 64.

It is not proper to use the expression " Court of the Sessions Judge " to whom the appeal lies from an order of the First Class Magistrate as indicating the Court of Additional or Assistant Sessions Judge: (1958) 2 Andh.W.R 480: (1968) M.L.J. (Cri.) 848.

22. District Magistrate.—If the District Magistrate has for the first time granted an application for the prosecution of a person for an offence under S. 211, Penal Code, his order can be revoked by the Sessions Judge to whom appeals from the District Magistrate ordinarily lie: 11 P.R. (Cr.) 1917: 18 Cr.L.J. 298; see also 9 Cr.L.J. 180: 1 I.C. 220; 14 Cr.L.J. 195: 19 I.C. 195: 28

M.L.J 486: 16 Cr.L.J. 439; but see 18 Cr.L.J. 759: 41 I.C. 135; see also 47 M. 229; 26 M.L.J. 511: 15 Cr.L.J. 409. A District Magistrate as such is not a Court and is only a first class Magistrate who exercises special powers with which he is invested either by the Cr.P.Code, or by the Local Government. His Court is that of a Magistrate of the first class and appeals from the appealable sentence of his Court lie to the Court of Sessions. Therefore an appeal from an order passed by him under S. 476-A will lie to the Court of Sessions and not to the High Court: 25 N.L.R. 1: 1929 N. 97 (F.B.).

23. Assistant Sessions Judge.—An appeal from the order of an Assistant Sessions Judge refusing to lodge a complaint under S. 476 lies under S. 476-B to the Court of Session, and not to the High Court, even though an Assistant Sessions Judge is also a member of the Court of Session: 60 C. 596; 58 C. 1117; A.I.R. 1939 A. 79. For the purpose of S. 476-B, Cr.P.Code, it is the Court of Session which will be deemed to be the Court to which the Assistant Sessions Judge is subordinate. An appeal from an order of the Assistant Sessions Judge can be heard by an Additional Sessions Judge who is a member of the Court of Session: A.I.R. 1946 Pat. 435: 47 Cr.L.J. 385.

24. Proviso (b).—The words " or proceeding " are new. Execution proceedings are covered by the words. Even under the old section the word 'case' was held to include execution proceedings. " The word 'case' taken by itself may mean either the original case out of which arose the case or procesding in which the offence is said to have been committed, or the actual proceeding in which the offence is said to have been committed. It must be construed with reference to the context in which it appears. The words are, nature, of the case in connection with which the offence is alleged to have been committed' , there being a remote connection with an original suit and an immediate connection with an execution proceeding, the case in connection with which the offence is alleged to have been committed is the execution proceedings." Per Chamier, J., in 34 A. 197: 13 Cr.L.J. 44.

VII. SUB-SECTION (4)—APPLICATION OF SUB-SECTION (1) TO CRIMINAL CONSPIRACIES, ABETMENT AND ATTEMPT TO COMMIT OFFENCES.

Abetment of an offence.—Under sub-S. (4) of S. 195 an " offence " under the section includes abetments and attempts, so that if a complaint of the Court is necessary in the case of the substantive offence, it is also necessary in the case of an abetment: I.L.R .(1940) Kar. 435: 1940 Sind 100. See also 39 I.C. 698 (abetment of offence under S. 211, I.P.C.). But see 35 Cr.L.J. 1251: 1934 S. 78 (1). Sub-S. (4) of S. 195 means that where a party to a proceeding is alleged to be guilty of conspiracy to commit or abetment of an offence of forgery committed in respect of a document produced or given in evidence in a proceeding in any Court the bar imposed by S. 195 applies but a person who is not a party gets no protection from Cl. (*c*) of sub-S. (1) of S. 195 and is not within the purview of S. 476 in respect of the offences mentioned in Cl. (*c*): 58 C. 727 (732): 1931 Cal. 438; see 27 Cr.L.J. 669: 1926 R. 53: 32 A. 74; 15 C.W.N. 565. Where the offence of abetment of forgery and using a forged document as genuine were committed by a party to a suit, a prosecution is not maintainable without the sanction of the Court which tried the suit: 36 M. 387: 1912 M.W.N. 3 following 14 C.W.N. 479; 12 B. 36; see also 20 M. 8 (9).

Attempt to use forged document.—The filing of a forged document in a Court, with the intention of relying on it at the trial of a case, amounts to an attempt to use such document though the document itself was not actually used; and the person filing it may be prosecuted for offences under Ss. 511 and 471, Penal Code: 13 I.C. 99 dissenting from 35 C. 820.

Prosecution under Section 193 read with Section 120-B, I.P.C.—For a prosecution on a charge of conspiracy under S. 193 read with S. 120-B of the Penal Code, the previous sanction of the Magistrate is necessary under S. 195 (4) of the Cr.P.C.: 33 Cr.L.J. 657: 1932 C. 850.

VIII. SUB-SECTION (5)—WITHDRAWAL OF COMPLAINT MADE UNDER SUB-SECTION (1) (a).

Withdrawal of complaint made under sub-Section (1) (a).—Where a public servant, whether he is a Court or not, files a complaint in respect of an offence falling under S. 195 (1) (*a*), there is no appeal. But sub-S. (5) newly added enables the authority to which such public servant is

subordinate to withdraw the complaint, which he can do by way of revision and not as Civil Miscellaneous Appeal: (1953) 1 M.L.J. 24: A.I.R. 1953 Mad. 569; 57 M. 1101 (Application to District Magistrate for withdrawal of complaint made by subordinate Magistrate under S. 188, I.P.C., is one by way of revision). Under S. 195 (5) of the Cr.P.C., any authority to which a public servant who has made a complaint under sub-S. (1), Clause (*a*) of that section is subordinate may order the withdrawal of that complaint: 28 Cr.L.J. 547 (1): 1927 A. 828; 74 C.L.J. 580: 1942 Cal. 307 (High Court in such circumstances will not exercise a jurisdiction which shall more properly be exercised by another authority). The Sub-Divisional Magistrate passed an order against the accused under S. 144, Cr.P.C. The same not having been complied with the Magistrate initiated proceedings before the Sessions Judge under S. 195 (1) (*a*), Cr. P.C. Subsequently the accused complied with the order and an application was made to the Sessions Judge for withdrawal of the complaint by the Sub-Divisional Magistrate: Held, that under S. 17, Cr.P.C., the District Magistrate and not the Sessions Judge is the authority to whom the Sub-Divisional Magistrate is subordinate and that the application for withdrawal must have been made to the District Magistrate and not to the Sessions Judge: Held, also, that a complaint made by a Magistrate under S. 195 (1) (*a*) is not a judicial order and that the Magistrate does so as a 'public servant' and not as a Court and that consequently sub-S. (3) of S. 195, Cr.P.C., can have no application to the case: 6 P. 39: 1927 P. 111. See also 47 M. 56; 1941 O.W.N. 1130: 1942 Oudh 50; 61 C.W.N. 658, cited in Note 2 under Heading II above. But see 47 B. 102: 24 Bom. L.R. 810, following 42 M. 64, cited in Note 2 under Heading II above. Where a First Class Magistrate has filed a complaint under S. 188, Penal Code, for the disobedience of his order under S. 144, Criminal P.C., the Additional District Magistrate has no jurisdiction to withdraw it whether the First Class Magistrate is considered to have filed the complaint as a Court or purely as a public servant. On the former view it is the Sessions Court and on the latter view it is the District Magistrate that has power to withdraw the complaint: A.I.R. 1953 Mad. 956 following A.I.R. 1944 Nag. 84 and dissenting from A.I.R. 1951 All. 828, cited in Note 2 under Heading II above.

The Registrar of the Small Cause Court can direct the prosecution for an offence under S. 182, I.P.C., as the public officer concerned, and the Chief Judge, to whom the Registrar is by law subordinate, can, acting as a public servant, cancel the order. But the order cannot be cancelled by the Small Cause Court, whether it is a Court presided over by a single Judge or a Full Bench: 27 B. 130 (134). See 18 C.W.N. 1323: 16 Cr.L.J. 151.

Sub-section applies only to complaints under sub-Section (1) (a).—A District Magistrate cannot order the withdrawal of a complaint made by a Court under S. 476 of the Cr.P.C., in respect of an offence falling under S. 211 of the I. P. C., as such a complaint is not referred to in S. 195 (5) of the Cr. P. C., which gives the Magistrate the power of withdrawal: 49 A. 752: 1927 A. 571 (1).

Notice to parties.—The act of finding a complaint by a Magistrate is a judicial act and an application to the District Magistrate to have the complaint withdrawn is asking the District Magistrate to exercise the judicial discretion. It is, therefore, not open to him to pass an order directing the withdrawal of the complaint without affording the parties concerned a chance of being heard: I.L.R. (1949) Nag. 475: A.I.R. 1949 Nag. 226.

Subordination of District Police to District Magistrate.—The expression in S. 195, sub-S. 5 of the Cr.P.C., "authority to which public servant is subordinate" connoting apparently a more distant and general entity than a departmental superior, covers the District Magistrate in relation to the police of his district: 30 Cr. L. J. 710: 117 I. C. 37. See also Note 3 under Heading II, *supra*.

Complaint by police-officer—Withdrawal by the District Magistrate—Administrative order.—A District Magistrate who orders the withdrawal of a complaint made by a police-officer is acting in his administrative capacity and such an order is not open to interference by a judicial tribunal: 30 Cr.L.J. 710: 117 I.C. 37.

Local Self-Government Election Rules—Subordination of Returning Officer to District Magistrate.—By reference to Rr. 16 and 17 of Local Self-Government Rules, (1925), it may be

taken as certain that the Returning Officer is a public servant subordinate to the District Magistrate. The District Magistrate therefore has authority to hear an appeal under S. 195 (5), Cr.P.C., and he is not justified in refusing jurisdiction: 1929 A. 931.

Additional Deputy Commissioner exercising powers under Section 83 (1) of the C. P. and Berar Municipalities Act, 1922, is subordinate only to State Government and not to Board of Revenue.—See I.L.R. (1953) Nag. 668: A.I.R. 1953 Nag. 121.

Appeal can be treated as an application under sub-Section (5).—See Heading IX, *infra*.

IX. APPEAL, REVIEW AND REVISION.

[See Notes under Ss. 476 and 476-B, *infra*].

Appeal.—When a public servant makes a complaint under sub-S. (1), Clause (*a*) there is no right of appeal under S. 476-B: See A.I.R. 1956 S. C. 153; 102 I. C. 483 (1): 28 Cr. L. J. 547 (1): 1927 A. 828. Similarly, when an appellate Court in the exercise of its authority under S. 195 (1) (*a*) has directed the institution of a complaint, the said order is not open to appeal: 1931 A.L.J. 366: 1931 A. 630 (1). Nor does an appeal lie from an order by a public servant under S. 195 (1) (*a*), refusing to file a complaint: 49 L.W. 387 (1): 1939 Mad. 336. But where a complaint has been made by a public servant, an application may be made to authority to which such public servant is subordinate to exercise his powers under sub-S. (5). In cases coming under Clauses (*b*) and (*c*), right of appeal is given under S. 476-B, *infra*: A. I. R. 1956 S.C. 153.

Where the order of the Magistrate directs that the appellant should be prosecuted for offences under Ss. 181, 182 and 193, I.P.C., the order in so far as it relates to offences under Ss. 181 and 182 is not appealable as it falls directly under S. 195 (1) (*a*). Even as regards the offence under S. 193, the order is not appealable if the offence is not committed in or in relation to any proceeding in a Court: 1956 S.C.J. 138: A.I.R. 1956 S.C. 153.

Where a Judge of a Court files a complaint under S. 476, Cr.P.C., with respect to an offence under S. 186, I.P.C., no appeal lies from such a complaint as the Judge has no right to hold proceedings under S. 476, in respect of an offence under S. 186, I.P.C. But since the Judge has been given by the law a power to make the complaint under S. 195 (1) (*a*), for the offence under S. 186, I.P.C., the complaint which he files should be attributed to the valid power under S. 195(1) (*a*) even though he institutes the proceedings under S. 476 under a wrong impression: 1940 A.L.J. 876: 1941 A. 100.

Appeal filed against complaint made under sub-Section (1) (a) can be treated as an application under sub-Section (5) for its withdrawal.—Although no appeal lies against an order for prosecution for any of the offences covered by Clause (*a*) of sub-S. 195, an application for withdrawal of the complaint under sub-S. (5) of S. 195, can be made to the District Judge to whom the Court making the complaint is subordinate and an appeal filed by the person proceeded against will be deemed to be an application under sub-S. (5). Where the appeal filed by the person proceeded against to the District Judge against a complaint by Subordinate Judge is transferred by the District Judge to an Additional District Judge for disposal, the appeal treated as application for withdrawal cannot be heard by the Additional District Judge as the Subordinate Judge is not subordinate to the Additional District Judge. The order for prosecution having been passed by a civil Court the High Court cannot exercise its powers of revision under S. 439, Cr.P.C. but as the case relates to Clause (*a*) of sub-S. (1) of S. 195 and sub-S. (5) of S. 195 applies, it can send back the case direct to Subordinate Judge for withdrawal of the complaint as he is subordinate to the High Court also: 1963 B.L.J.R. 375.

Appeal to Privy Council.—Where the High Court, in a proceeding under Clause 10, Letters Patent, granted sanction to the Public Prosecutor (or made to a complaint) to prosecute an Attorney for alleged perjury, it was held that the High Court could not under Clause 39, Letters Patent, grant leave to the Attorney to appeal to the Privy Council against the order of the High Court: 41 C. 734: 15 Cr. L. J. 52.

Appeal to Supreme Court.—Whether action should be taken under S. 195, is a matter primarily for the Court which hears the application, and its discretion is not to be lightly interfered with in appeal, even when that is competent. But where the legislature does not provide

for an appeal, it is preposterous on the part of the appellant to invite the Supreme Court to interfere in special appeal: A.I.R. 1956 S.C. 153: 1956 S.C.J. 138: 1956 Cr.L.J. 326.

Review.—Where an application to prosecute is rejected by a Judge, he cannot review the order, because the Code, contains no provision giving jurisdiction to a Court to review its orders passed under it: 26 B. 785: 4 B.L.R. 750. In view of an appeal being allowed by S. 476-B, a Court cannot review its order refusing to make a complaint under S. 476: 49 A. 752: 1927 A. 571 (1).

Revision.—In the case of an offence falling within sub-S (1) (*a*) of S. 195, of the Cr.P.C., a District Magistrate has inherent power to make the complaint and where the District Magistrate so acts, S. 476 does not apply, and therefore no appeal lies. But it comes within the revisional jurisdiction of the High Court and in exercise of that, the High Court can interfere: 6 R. 529: 1928 R. 296; A.I.R. 1953 Trav. C. 350: 1953 Cr.L.J. 1421 (Complaint in respect of offence under S. 188, I.P.C.—No appeal—Revision petition maintainable). See also 57 M. 1101: 1934 M. 473 (Application to District Magistrate for withdrawal of complaint made by subordinate Magistrate under S. 188, I.P.C., is one by way of revision). But see *infra*. Orders passed by a Subordinate or District Judge under S. 195 (1) (*a*), Cr.P.C., are purely administrative orders and as such are not subject to revision by the High Court. The question of the competency of a complaint made by a District Judge can only be raised by a rule directed against the order of the Magistrate taking cognizance of such complaint (Per Patterson, J.): 42 C.W.N. 531. The making of a complaint under S. 195 (1) (*a*) is not a judicial act but is the act of a public servant. Hence no revision lies under S. 439, from the order of the District Magistrate under S. 195 (5) directing withdrawal of such complaint as it is not passed by him a criminal Court: A.I.R. 1958 Pesh. 9. It was held that where an application for sanction to prosecute had been dealt with by two Courts, the High Court could interfere, if at all, in the exercise of its revisional jurisdiction only to prevent a gross and palpable failure of justice: 25 Cr.L.J. 454: 1924 A. 461: see also 84 I. C. 326: 1924 R. 369 cited under Heading III, *supra*. An order of the Township Court in Burma directing prosecution can be considered by the District Court but when once the latter Court has confirmed or cancelled the order, in appeal, the remedy of the aggrieved party lies by moving the High Court on revision and not the Divisional Court. If the original proceedings are held in the Sub-Divisional or District Court then the Divisional Court may have jurisdiction: 1923 R. 12: 1 Bur. L. J. 155. It is open to the High Court to consider in revision the propriety of an order directing or refusing to direct the prosecution: 25 O.C. 158: 1922 O. 18. No second appeal lies against the order of the First Appellate Court confirming an order directing prosecution. The only remedy is revision under S. 115, C. P. Code: 18 Cr.L.J. 977: 42 I.C. 593. The High Court can under S. 435 (1) of the Code, revise the order of the Sessions Judge on appeal under S. 195 (1) (*b*) and set aside the same if not satisfied as to its propriety: 20 Cr. L. J. 564: 52 I. C. 52: see also 16 Cr. L. J. 740: 31 I.C. 340.

X. TRANSFER.

Section 526 if controls Sections 193 (3), 476-A and 476-B.—S. 526 of the Cr. P. Code, which clothes the High Court with power to transfer any case from any file to any other file, controls S. 195 (3) and Ss. 476-A and 476-B of the Code. The Court to which an appeal against an order refusing to make or making a complaint is transferred is invested with all the powers of the ordinary Court of Appeal or revision for hearing the particular appeal or revision against the order under S. 195 of the Code: 26 Cr.L.J. 796: 1925 N. 358. But see 8 M. L. T. 297: 34 M. 186, holding that the language of S. 195, indicates that any transfer so made would be ineffective and futile, unless the transfer was made to a Court, to which the Court before which the application is pending is subordinate; for no Court could take cognizance of the case on a sanction by a Court not mentioned in the section (approving 16 A. 9 and 30 A. 47).

Private person has no locus standi to apply for transfer.—A person moving the Court to take action under S. 476 cannot be considered to be an interested person within the meaning of S. 526 (3) and has no *locus standi* to apply for the transfer of a case, the Court being the "complainant" 31 P.L.R. 840: 1930 L. 873.